

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 - - - - -X
4 UNITED STATES OF AMERICA, : 18-CR-654 (KAM)
5 Plaintiff, :
6 -against- : United States Courthouse
7 DARELL WOODFORD, : Brooklyn, New York
8 Defendant. : Monday, July 23, 2019
9 : 12:30 p.m.
10 - - - - -X

11 TRANSCRIPT OF CRIMINAL CAUSE FOR
12 EVIDENTIARY HEARING (CONTINUED)
13 BEFORE THE HONORABLE KIYO A. MATSUMOTO
14 UNITED STATES DISTRICT JUDGE

15 A P P E A R A N C E S:

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30 Proceedings recorded by Stenographic machine shorthand,
31 transcript produced by Computer-Assisted Transcription.

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1 (In open court. Continuation from July 8, 2019.)

2 THE COURTROOM DEPUTY: This is the continuation of
3 the evidentiary hearing 18-CR-654, USA versus Darell
4 Woodford.

5 Would the Government's attorney state your
6 appearances?

7 MS. REID: Yes. Good afternoon, Your Honor. Erin
8 Reid for the Government, along with Temidayo
9 Aganga-Williams; and with the Court's permission, Bailey
10 Springer, who is an intern with our office.

11 THE COURT: Thank you. All right. Good
12 afternoon.

13 THE COURTROOM DEPUTY: And on behalf of
14 Mr. Woodford?

15 MS. GLASHAUSSER: Good afternoon, Your Honor.
16 Allegra Glashausser representing Mr. Woodford. Also with me
17 is Michael Weil, another lawyer with the Federal Defenders.
18 We are also joined by Rachel Bass, paralegal at
19 Federal Defenders, and Katherine Matejcak, an intern with
20 Federal Defenders.

21 And I will let her spell her name for you.

22 MS. MATEJCAK: M-A-T-E-J-C-A-K.

23 THE COURT: All right. Thank you. Good
24 afternoon.

25 All right. Are we ready to continue with the

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1 testimony of the sergeant, Ms. Reid?

2 MS. REID: Well, Your Honor --

3 THE COURT: Oh, right. This was Ms. Glashausser's
4 witness. You are correct.

5 MS. REID: I just wanted to raise one issue before
6 we started. Ms. Glashausser asked me to ask the officer to
7 bring his memo book from August 30th of 2018, which he did,
8 Your Honor, and I provided a redacted version to the
9 defense.

10 I wanted to just hand up a copy of the redacted
11 version, as well as the unredacted version, in case the
12 Court could review the redactions. There was a question
13 about them this morning from the defense.

14 THE COURT: All right. Thank you.

15 And could you just describe on the record what it
16 is that you redacted so we have an idea?

17 MS. REID: Yes, Your Honor. I redacted irrelevant
18 and confidential materials within the memo book.

19 THE COURT: All right. Thank you.

20 All right. Ms. Glashausser, do you have any
21 issues?

22 MS. GLASHAUSSER: No, Your Honor. I just inquired
23 about the redactions, and if Your Honor agrees with them,
24 then I have no...

25 THE COURT: The Government had represented that

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1 the redactions were for confidential or irrelevant material.
2 Are the redactions that you have given to me due to the
3 confidential nature of it or the irrelevant nature of it or
4 both?

5 MS. REID: Both, Your Honor.

6 THE COURT: All right.

7 MS. REID: But in particular the confidential
8 nature.

9 THE COURT: All right. I understand it is
10 confidential, but are you also saying that the redactions
11 have nothing whatsoever to do with this case?

12 MS. REID: That's right, Your Honor.

13 THE COURT: All right. I'm satisfied, then, with
14 that representation.

15 MS. GLASHAUSSER: Thank you, Your Honor.

16 And I apologize, Your Honor, but we seem to be
17 having some sort of audio difficulty in the other room. The
18 audio is --

19 MR. WEIL: I think if we speak into the
20 microphone. I think as long as the people speak into the
21 microphone. My understanding is that the defendant could
22 not hear Ms. Glashausser when standing. So I think that if
23 the parties speak into the microphones, it will -- it will
24 do better.

25 THE COURT: All right. Your voice just has to

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1 carry across the disk on the desk if you want your client to
2 hear you.

3 All right, Ms. Glashausser?

4 MS. GLASHAUSSER: Thank you, Your Honor.

5 THE COURT: All right. And are you ready to
6 proceed?

7 MR. WEIL: Your Honor, there was the brief --
8 before we continue with the witness, there was briefing
9 around the discovery issue. I don't know if the Court wants
10 to take that up at the close of today's hearing, or if you
11 would --

12 THE COURT: I think at the close would be fine so
13 the sergeant does not have to sit here through that. I am
14 imagining that the parties are far apart on this issue. I
15 am not sure that they are as far apart as they might think
16 they are. But I think we can go ahead with the sergeant's
17 testimony so as not to delay him from his duties this
18 afternoon.

19 MR. WEIL: Thank you.

20 THE COURT: All right. So if he is outside, maybe
21 we can get him up here on the stand.

22 MS. REID: Yes, he is in the witness room,
23 Your Honor.

24 THE COURT: All right. Thank you.

25 (Pause in proceedings.)

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1 (The witness enters the courtroom.)

2 THE COURT: Good afternoon.

3 THE WITNESS: Good afternoon, Your Honor.

4 THE COURT: Sir, you are still under oath, all
5 right?

6 THE WITNESS: Yes.

7 THE COURT: So you are still under oath. I do not
8 think there is any need, unless any of the parties request
9 to re-swear the witness. He understands that he is still
10 under oath.

11 Speak toward the microphone. You do not need to
12 get too close to it. Just maintain about five inches, all
13 right?

14 THE WITNESS: Okay.

15 THE COURT: Thank you.

16 MS. GLASHAUSSER: I apologize, Your Honor. It
17 seems that the audio-visual have cut out in the other room.
18 I'll let Mr. Weil elaborate.

19 MR. WEIL: Yes.

20 MS. GLASHAUSSER: He's the one getting the text
21 messages.

22 MR. WEIL: Yes. Your Honor, now I'm speaking into
23 the microphone. I've been told that the technical aides are
24 changing out a cable right now, and they've lost all
25 audio-visual. If you give me a moment I think they're

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1 getting it fixed right now.

2 THE COURT: Is there someone from IT in the
3 courtroom with --

4 MR. WEIL: There is.

5 THE COURT: -- Mr. Woodford?

6 MR. WEIL: There is, Your Honor.

7 THE COURT: All right.

8 MR. WEIL: And I think I'll get a text as soon as
9 they're back up.

10 THE COURT: All right.

11 Do you have one of your colleagues in the room, is
12 that how you --

13 MR. WEIL: We do.

14 THE COURT: All right.

15 MR. WEIL: So I'm getting texts when there are
16 issues.

17 THE COURT: All right. I'm sorry there are
18 issues.

19 (Pause in proceedings.)

20 MR. WEIL: It seems that -- I've gotten a text
21 that the audio has been fixed.

22 THE COURT: What about the visual?

23 MR. WEIL: Not yet.

24 (Pause in proceedings.)

25 THE COURT: I apologize. I think we can get

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1 started.

2 MS. GLASHAUSSER: Thank you, Your Honor.

3 (The witness resumes the witness stand.)

4 **C H R I S T O P H E R D O N O H U E,**

5 called as a witness, having been previously duly

6 sworn, was examined and testified as follows:

7 DIRECT EXAMINATION (CONTINUED)

8 BY MS. GLASHAUSSER:

9 Q Good afternoon, Sergeant Donohue.

10 A Good afternoon.

11 Q So you testified that your job is to be the field
12 intelligence officer, right?

13 A That's correct.

14 Q And as the name suggests, part of that job is
15 collecting intelligence, right?

16 A Yes.

17 Q And that means collecting information about the people
18 in your precinct, right?

19 A Certain individuals, yes.

20 Q And as part of that collection you go out on patrol,
21 right?

22 A Occasionally.

23 Q Do you patrol by car when you go out on patrol?

24 A Yes.

25 Q And how often are you out on patrol -- or were you when

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1 you were the field intelligence officer?

2 A I tried to get out for a short time daily.

3 Q Daily?

4 A I tried to.

5 Q Okay.

6 A Yes.

7 Q In your car?

8 A Yes.

9 Q And how would you collect the intelligence?

10 A Well, I -- what do you mean by the question? I'm
11 sorry.

12 Q Well, when you would learn something new when you were
13 on patrol, what would you do to collect it; how would you
14 record it?

15 A Well, you know, I wouldn't record it anywhere. It
16 would just be information we would, know unless it wasn't a
17 major event.

18 Q Well, you said that you go out on patrol for a short
19 time daily, but the other officers in your unit go out more
20 often, right?

21 A Sometimes, yes.

22 Q Without you sometimes?

23 A Yes.

24 Q So how would you learn the information that those
25 officers would see on patrol?

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1 A Just through general speaking with one another.

2 Q Well, if your job is to collect intelligence, where
3 would you store the information that you collect?

4 A There is no one place to store it.

5 Q Well, there are numerous places?

6 A No. There -- there's -- I would record things on DD-5
7 sometimes. We have RTRD, which is a recidivist tracking
8 database, I believe, that stores like a recidivists and our
9 crews.

10 Q By crews do you mean people that you believe are
11 involved in gangs?

12 A Correct.

13 Q So there's a database that tracks the people that you
14 believe are involved in gangs?

15 A Yes. That also DAS Lite as well.

16 Q So the recidivist tracking database tracks the crews
17 that you're monitoring?

18 A Yes.

19 Q Okay. And is that available on the DAS Lite system as
20 well?

21 A No, they're two different systems.

22 Q They're two different systems?

23 A Yes.

24 Q Can you get the recidivist tracking database on your
25 telephone?

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1 A I -- I don't know. I never have personally.

2 Q Well, how do you access it?

3 A From the hardtop computer.

4 Q And do you input information when you learn new
5 information?

6 A We input people, yes.

7 Q And do other precincts have access to the database as
8 well?

9 A Yes.

10 Q So you in the 70th Precinct can see what somebody in
11 the 67th Precinct enters about an individual?

12 A Correct.

13 Q So if you look up an individual's name in the database,
14 do you see the whole history of any interactions an officer
15 has had with that person?

16 MS. REID: I would object on the grounds of
17 relevance.

18 THE COURT: Well, what is the relevance,
19 Ms. Glashausser?

20 MS. GLASHAUSSER: Well, Your Honor, the sergeant
21 and the End Officer Vasilopoulos are testifying about how
22 they know Mr. Woodford and the other people that they
23 believe to be in a crew or gang, and I understand him to be
24 testifying about the way that they track those individuals,
25 which is --

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1 THE COURT: He did not say that that is how he did
2 it.

3 You asked him how he records information and what
4 databases exist.

5 MS. GLASHAUSSER: Correct, Your Honor.

6 THE COURT: He was not testifying specifically in
7 regard to Mr. Woodford. And I am not going to allow you to
8 take a whole deep dive into the intelligence databases of
9 NYPD, all right? If you have specific questions about
10 Mr. Woodford and whether this individual was aware of him
11 prior to the identification, you may do that. But you do
12 not get to explore everything about the database and then
13 ask me for subsequent permission to get access to the
14 database, because that is not going to happen.

15 It is not relevant and you are not entitled to
16 that.

17 MS. GLASHAUSSER: Okay, Your Honor.

18 THE COURT: So if you have specific questions
19 about how he knew Mr. Woodford or how he was familiar with
20 him or whether or not he was able to identify him based on
21 his investigations, patrols, and viewings of specific
22 videos, you may do that.

23 MS. GLASHAUSSER: Well, Your Honor, may I ask if
24 he tracked the 8 Trey Cowboy Crips in this database?

25 THE COURT: No.

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1 I mean, why is that relevant?

2 MS. GLASHAUSSER: Well, I understand from the
3 Government's submissions and the previous officer's
4 testimony that the tracking of that group is how they are
5 saying they came to know or be aware of Mr. Woodford.

6 THE COURT: Well, I think the prior --

7 MS. GLASHAUSSER: So, Your Honor, you know, that
8 seems to me to be directly relevant to whether or not he had
9 an adequate knowledge about Mr. Woodford before viewing the
10 video.

11 THE COURT: I think the prior officer testified
12 about how he personally became familiar with Mr. Woodford
13 and his associates and the 8 Trey Cowboy Crips, and he did
14 not testify about tracking or recording or extracting
15 information from any database, as I recall.

16 MS. GLASHAUSSER: Well, Your Honor, he testified
17 that he documented it. And then when I asked him how he
18 documented the information, he said that he didn't do any
19 reports, didn't write anything down. And this is the first
20 I learned of this database, which sounds like where
21 Officer Vasilopoulos may have been -- what
22 Officer Vasilopoulos may have been referring to when he
23 said, I documented it.

24 THE COURT: He did not say that he used -- this
25 witness did not say that he accessed information from this

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1 database. He said it was accessible to police officers in
2 the precinct.

3 But what is at issue is his identification of
4 Mr. Woodford.

5 MS. GLASHAUSSER: Understood, Your Honor. And
6 how -- I have plenty of questions about that specifically.
7 But I do believe how he was tracking information as the
8 field intelligence officer and how he was monitoring the
9 specific crew, the 8 Trey Cowboy Crips and the specific
10 people in it, are directly relevant to how well he knew the
11 individuals we're talking about.

12 THE COURT: There is one individual we are talking
13 about right now and that is Mr. Woodford, his identification
14 of Mr. Woodford.

15 MS. GLASHAUSSER: Correct, Your Honor.

16 THE COURT: And I understand that some of the
17 identification may have had something to do with the
18 associations that Mr. Woodford had with some of the other
19 members of the -- or associates of the 8 Trey Cowboy Crips.

20 MS. GLASHAUSSER: Yes, Your Honor.

21 THE COURT: But this witness has not testified
22 that he put data into the database or that he accessed the
23 database.

24 If you want to ask him that with regard to
25 Mr. Woodford, you may do so.

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1 MS. GLASHAUSSER: Okay. Thank you, Your Honor. I
2 will do that. Thank you.

3 BY MS. GLASHAUSSER:

4 Q Sergeant Donohue, did you access this database to
5 search for information about Mr. Woodford?

6 A I recall seeing him in there. I don't know if I
7 specifically searched it. But I know he is entered into the
8 system.

9 Q Well, how did you learn that he is entered into the
10 system?

11 A I don't know. I just recall -- I know that he is in
12 the system. I don't remember how I came about that
13 information, if I ran it myself or it was presented to me by
14 one of my officers.

15 Q All right. And how would something like that be
16 presented to you?

17 A I don't know. It -- a piece of paper given to me,
18 maybe.

19 Q Sergeant, what type of piece of paper; would it be a
20 report?

21 MS. REID: Objection.

22 THE COURT: I will let him answer this question,
23 then we are going to move on. Okay?

24 A It's a printout. When the NYSID is run, it prints out
25 the information of the individual.

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1 BY MS. GLASHAUSSER:

2 Q And do you have that piece of paper with regards to
3 Mr. Woodford?

4 A Not with me, no.

5 Q But would you have it in your records?

6 A I -- I don't think so.

7 Q I would like to turn your attention to July 17th. You
8 did a car stop that day, right?

9 A I believe so.

10 If I could refer to my memo book?

11 Q Okay. Would you like me to -- do you have it with you,
12 Sergeant?

13 A Yes, I do.

14 Q Okay.

15 A Yes, I conducted a car stop that day.

16 Q And you were with Officer Vasilopoulos?

17 A Yes, I was.

18 Q And Officer Lopez?

19 A Yes, I was.

20 MS. GLASHAUSSER: Your Honor, I apologize.

21 Mr. Weil has just told me that the audio has cut out again
22 in the other room.

23 THE COURT: Abe, they do not have audio in there.

24 COURTROOM TECHNICAL OFFICER: I know, they just
25 told me that right now. Let me call them.

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1 (Pause in proceedings.)

2 MR. WEIL: Your Honor?

3 THE COURT: Yes.

4 MR. WEIL: We've been told the audio is back. I
5 just wanted to advise the Court from the defense perspective
6 if the Court wants to try putting Mr. Woodford in the back
7 room there.

8 THE COURT: We are trying that. We were just
9 checking with the marshals --

10 MR. WEIL: Okay.

11 THE COURT: -- to make sure.

12 That was my original plan. Since he is not seeing
13 the witness anyway, but can sit in the back with that door
14 open. I just do not know if it is a security issue.

15 MR. WEIL: Right.

16 THE COURT: I do not want to present any security
17 issues, but I do not see the problem. If the marshals have
18 a problem, I will not do it.

19 MR. WEIL: Or a speakerphone would work. I just
20 wanted to say the defense is open to any solution at all to
21 move it along.

22 THE COURT: A speakerphone where we would --

23 MR. WEIL: I question whether a speakerphone by
24 the Court would suffice. We sometimes have people appearing
25 for arraignment remotely like that. It's difficult --

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1 THE COURT: Do you mean a speakerphone to
2 Judge Mauskopf's courtroom?

3 MR. WEIL: That would be another option, right,
4 Your Honor.

5 (Pause in proceedings.)

6 THE COURT: All right. Okay. Yes, let's do that.

7 We are just going to have him sit where he can
8 hear what is going on in the courtroom. So everybody needs
9 to remember to please use the microphones and speak up. All
10 right?

11 (Pause in proceedings.)

12 THE COURT: Why don't you keep going until --
13 Mr. Weil, tell your colleague when he is ready to be moved,
14 we will stop and let him be moved. But why don't we just
15 keep going right now. We are already running an hour and a
16 half behind thanks to this glitch. I'm sorry.

17 MR. WEIL: Your Honor, when you say "when he's
18 ready," I just don't --

19 THE COURT: When he's ready to be moved. When the
20 marshals are ready to move him here --

21 MR. WEIL: Okay.

22 THE COURT: -- into the pen.

23 (Pause in proceedings.)

24 MR. WEIL: All right. They've moving him now,
25 Judge --

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1 THE COURT: All right.

2 MR. WEIL: -- so...

3 (Pause in proceedings.)

4 MR. WEIL: I believe he may still be downstairs,
5 Your Honor. They're coming up now.

6 (Pause in proceedings.)

7 THE COURT: All right. I think we are ready to
8 proceed.

9 MS. GLASHAUSSER: Thank you, Your Honor.

10 BY MS. GLASHAUSSER:

11 Q So Sergeant Donohue, I was asking you about a July 17th
12 car stop, and I believe you just said you were with
13 Officer Vasilopoulos that day?

14 A Correct.

15 Q And Officer Lopez?

16 A Correct.

17 Q And do you remember why the car was stopped on
18 July 17th?

19 A I don't.

20 Q Do you remember the name of the driver of the car?

21 A Not off the top of my head, no.

22 Q Well, the driver of the car was arrested; is that
23 right?

24 A Yes.

25 Q And when the three of you searched the car,

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1 Officer Vasilopoulos went up to the passenger's side of the
2 car, right?

3 A I believe so.

4 Q Well, do you remember, Sergeant, what
5 Officer Vasilopoulos did?

6 A I believe he went to the passenger's side of the car.

7 Q And Officer Lopez arrested the driver?

8 A Yes.

9 Q And what was your role?

10 A I was -- I'm the supervisor. I'm there to make sure
11 that my officers are supervised.

12 Q And so what does that mean; do you --

13 A To verify the arrest, basically.

14 Q Okay. So once they decide to arrest, somebody you
15 verify it?

16 A Correct. And verify that their legal premise to be
17 arresting a person.

18 Q So in this case you verified the arrest of the driver
19 of the car?

20 A That's correct.

21 Q Did you get out of the car during the car stop, or do
22 you do that from inside the car?

23 A No, I'm outside the car.

24 Q You wrote down in your memo book that the car was
25 stopped, right?

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1 A Yes, I did.

2 Q And you wrote down information about the person that
3 was arrested, right?

4 A (No audible response.)

5 Q That the person was arrested?

6 A That the person was arrested, yes.

7 Q You just wrote that, 92P0 Lopez for open warrant,
8 correct?

9 A Correct.

10 THE COURT: And, Ms. Glashausser, would you just
11 mind referring to an exhibit number so that our record is
12 clear?

13 MS. GLASHAUSSER: Sure, Your Honor, of course.
14 This is marked as 3500 CD2 --

15 THE COURT: Is that D, as in "David" or --

16 MS. GLASHAUSSER: D, as in "David" as in
17 Mr. Donohue.

18 THE COURT: Thank you.

19 MS. GLASHAUSSER: Let me just make sure that's --

20 MS. REID: Your Honor, its's not been offered as
21 an exhibit.

22 THE COURT: All right. She was reading from
23 something. I just wanted the record to reflect what it was.

24 MS. REID: Yes. And I would object to her reading
25 it. It's not in evidence.

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1 THE COURT: Well, she is just using it to examine
2 him about what he wrote.

3 You are not reading it in verbatim, correct? You
4 are just asking him specific questions about his entries?

5 MS. GLASHAUSSER: Right. I'm asking him about
6 what he wrote in his memo book. And I apologize, it's
7 marked as 3500 CD3. I misspoke earlier.

8 THE COURT: All right. Thank you.

9 MS. GLASHAUSSER: May I continue, Your Honor?

10 THE COURT: Yes, you may.

11 MS. GLASHAUSSER: Thank you.

12 THE COURT: I just want to make clear you
13 understand. You are not reading his memo book into the
14 record, but you are asking him specific questions --

15 MS. GLASHAUSSER: Right.

16 THE COURT: -- about particular entries that he
17 made --

18 MS. GLASHAUSSER: That's correct, Your Honor.

19 THE COURT: All right.

20 MS. GLASHAUSSER: Correct.

21 THE COURT: Thank you.

22 Go ahead, Ms. Glashausser.

23 BY MS. GLASHAUSSER:

24 Q So, Sergeant Donohue, when you wrote 92, does that mean
25 that somebody is arrested?

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1 A Yes. That means somebody was placed under arrest.

2 Q And that person was not Mr. Woodford, right?

3 A It was not.

4 Q You didn't write down anything about Mr. Woodford?

5 A I did not.

6 Q And you didn't write down anything about seeing people
7 associated with the 8 Trey Cowboy Crips?

8 A I did not.

9 Q And did you talk to the driver during this car stop, or
10 do you remember?

11 A I don't remember.

12 Q Do you remember if you talked at all to the driver or
13 the passenger during the car stop?

14 A I don't remember me personally having a specific
15 conversation with either one.

16 Q And so did you recognize either of the people in the
17 car?

18 A I did recognize the passenger.

19 Q Had you met the passenger before?

20 A I hadn't.

21 Q You had not?

22 A I had not.

23 Q How did you recognize him?

24 A I knew him from his associates, and I had seen him on
25 YouTube as well.

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1 Q And what do you mean by you knew him from his
2 associates?

3 A The people who he associates with, the 8 Trey Cowboy
4 Crips, I know them, and he was in videos -- or a video with
5 them.

6 Q Was the driver of the car somebody you recognized as an
7 8 Trey Cowboy Crips or associate?

8 A He was not.

9 Q So you said that you knew the passenger, you'd seen a
10 video of him. Had you ever seen him in person before the
11 stop?

12 A Not that I recall.

13 Q I would like to turn to August 30th, Sergeant Donohue.
14 You had testified when you were here a couple of weeks ago
15 that you were working that day on August 30th; is that
16 right?

17 A Yes, I was.

18 Q Do you recall what hours you worked that day?

19 A Can I refer to my notebook?

20 Q Please.

21 A I worked a tour of 13:40 hours by 22:15. That's
22 4:40 in the afternoon to 10:15 at night.

23 Q Was that your regular tour or did you have reason to
24 stay late that day?

25 A I -- I don't know. As the field intelligence officer,

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1 I work odd hours.

2 Q Well, do you note in your memo book if you take any
3 overtime?

4 A Yes.

5 Q And did you take any overtime that day?

6 A Yes. I took 30 minutes of overtime.

7 Q So maybe I heard you wrong, but you testified that your
8 shift ended at 10:15. So is that before or after the
9 overtime?

10 A My shift ended at 10:15, and I left at 10:45 taking 30
11 minutes at the end.

12 Q And does your memo book indicate why you took extra
13 time that day?

14 A No, we're not required to put that.

15 Q Do you recall why you took extra time that day?

16 A I don't.

17 Q Well, on that day you learned that there had been a
18 shooting, right?

19 A Yes.

20 Q And the shooting was in the 6, 7 Precinct, the
21 67th Precinct, right?

22 A Correct.

23 Q And that precinct's next to your precinct; is that
24 right?

25 A Yes.

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1 Q Is there a field intelligence sergeant in the role
2 similar to yourself in the 67th Precinct?

3 A Yes, there is.

4 Q And is that person's job like yours, to monitor the
5 crews and gangs in that precinct?

6 A Same thing, yes.

7 Q And is there any overlap between the gangs or crews
8 that the two of you monitor, you and your counterpart?

9 A I'm confused by what you mean by "overlap."

10 Q Well, do you share information with your counterpart in
11 the 67th Precinct?

12 A Yes.

13 Q And do they share information with you?

14 A Yes.

15 Q Specifically about gang members or crew members that
16 they are monitoring?

17 A Yes, anything.

18 Q And is there any sort of procedure about how that
19 information is shared?

20 A No. It's just through word of mouth.

21 Q How frequently are you sharing information?

22 A I -- I can't put an exact number on it. It's whenever
23 we need to.

24 Q Whenever you need to?

25 A Yes.

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1 Q And you testified that on August 30th when you learned
2 about the shooting, you also learned the name of the person
3 who was shot, right?

4 A That's correct.

5 Q Did you learn that from your counterpart in the 6, 7?

6 A I don't recall exactly where I heard it from, but I did
7 hear the name.

8 Q Well, when there is a shooting -- let me step back.

9 When you heard the name, you believed the victim
10 was a member of the Folk Nation gang, right?

11 A Correct.

12 Q Okay. And is the Folk Nation gang active in your
13 precinct?

14 A In certain areas, yes.

15 Q Okay.

16 A But that's not their mainstay.

17 Q But they are active in certain areas in the
18 70th Precinct?

19 A Yes.

20 Q And they're also active in the 67th Precinct?

21 A Yes.

22 Q Okay. So the Folk Nation gang overlaps between your
23 two precincts; they're active in both precincts, right?

24 A Yes.

25 Q And so when something happens with a member of the

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1 Folk Nation, is that the type of incident that would cause
2 you to report to the field intelligence officer of the
3 67th Precinct?

4 A Yes.

5 Q And vice versa, does the field intelligence officer in
6 the 67th call you or contact you if something happens with
7 the Folk Nation in their precinct?

8 A Yes, normally.

9 Q And you also knew the Folk Nation to be a rival gang to
10 the 8 Trey Cowboy Crips, right?

11 A Correct.

12 Q And the reason that you recognized the shooting
13 victim's name was because he was in the Folk Nation; is that
14 right?

15 A Correct.

16 Q But it is also because he was involved in a prior
17 shooting in your precinct, right?

18 A Correct.

19 Q And was that shooting related to the 8 Trey Cowboy
20 Crips?

21 MS. REID: Objection.

22 THE COURT: Is it a relevancy objection?

23 MS. REID: Yes.

24 THE COURT: Sustained.

25 MS. GLASHAUSSER: Your Honor, may I explain why

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1 I'm asking the question?

2 THE COURT: All right.

3 MS. GLASHAUSSER: I'm trying to find out what
4 information the sergeant knew before seeing the video.

5 THE COURT: Knew about what specifically?

6 MS. GLASHAUSSER: About what was happening in the
7 video. He knew the name of the victim, knew that person to
8 be a gang member in the Folk Nation, knew the Folk Nation
9 had a dispute with the 8 Trey Cowboy Crips. This all goes
10 to what information he already had relating to his
11 identification before he viewed the identification video.

12 So I do think it's relevant if the prior shooting
13 was between the two -- the same two groups.

14 THE COURT: All right. Well, so you want to just
15 ask him whether or not the victim of the shooting
16 involved -- whether the shooting itself involved an
17 inter-gang shooting between the 8 Trey Cowboy Crips and the
18 Folk Nation?

19 MS. GLASHAUSSER: The prior shooting, the one that
20 the victim in the August 30th shooting was the perpetrator
21 of.

22 THE COURT: All right. I'll let you answer that
23 question.

24 MS. GLASHAUSSER: Thank you, Your Honor.

25 THE WITNESS: Could you just say it one more time?

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1 I'm sorry.

2 MS. GLASHAUSSER: Yes, I'll ask it again, of
3 course.

4 BY MS. GLASHAUSSER:

5 Q Okay. The prior shooting that the victim was involved
6 in in your precinct, was that related to the 8 Trey Cowboy
7 Crips?

8 A No, it was not.

9 Q When did you learn the victim's name in the August 30th
10 shooting?

11 A I -- I -- I don't know. I don't recall.

12 Q Well, what did you do when you learned the victim's
13 name?

14 A Nothing.

15 Q You didn't ask questions about the shooting?

16 A I'm -- I might have asked questions. I didn't do
17 anything physically.

18 Q Okay. What kind of questions did you ask?

19 A I don't know. I don't even -- I don't remember who
20 told me either.

21 Q Okay. But you were also told -- you were told where
22 the shooting was, right?

23 A I believe so.

24 Q And you also learned that somebody in the 67th Precinct
25 thought that an individual name Pudge Boom was somehow

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1 involved in the incident, right?

2 A Yes. And that was -- that was later after I had left
3 work.

4 Q Okay. And how did you learn that information about
5 Pudge Boom?

6 A My commanding officer, the -- I don't remember if he
7 called me, but he sent me an e-mail with the video.

8 Q Did he send you an e-mail saying someone in the 67th
9 thinks Pudge Boom is in this video?

10 A I don't remember if that was via e-mail, but he did
11 tell me that -- and, you know, that might have been over the
12 telephone.

13 Q And Pudge Boom is someone you're familiar with?

14 A Yes.

15 Q How are you familiar with him?

16 A He's another gang member in another command.

17 Q In which command?

18 A I believe in the 63rd. I'm not 100 percent about that,
19 though.

20 Q And what else did Palumbo -- that's your commanding
21 officer, right, Palumbo?

22 A Yes.

23 Q What else did he say to you other than the information
24 about Pudge Boom?

25 A I -- I really don't remember. I just -- I remember

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1 specifically that he said that they thought it was Pudge
2 Boom, and then they checked the e-mail.

3 Q Did your commanding officer have an opinion about
4 whether or not it was Pudge Boom?

5 A No, he doesn't now about that stuff. He goes to me for
6 that.

7 Q Okay. So when you got the video, did you recognize
8 anyone in the video that -- well, let me just step back for
9 a second.

10 What video is it that your commanding officer sent
11 you; what did it show?

12 A It was a video, street level. Shows the victim walking
13 towards the camera and then other individuals walking
14 towards and then a fight ensues.

15 Q And did you recognize anyone in that video?

16 A I did.

17 Q Who did you recognize?

18 A You want to know all the people?

19 Q Yes, please.

20 A I recognized the victim. I recognize Mike Williams. I
21 recognized Tegan Chambers, and I recognize Darell Woodford.

22 Q And how did you recognize Mike Williams?

23 A I've known him for years.

24 Q How? In what -- how did you know him?

25 A He's a known 8 Trey Cowboy Crips in my precinct.

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1 Q So does that mean you had arrested him before; you had
2 talked to him; what does it --

3 A I debriefed him. I don't know if I've ever physically
4 arrested him, but I've been there when he was arrested.

5 Q And the debrief is something that happens after an
6 arrest?

7 A Yes.

8 Q Okay. And what about Tegan Chambers, how did you know
9 him?

10 A The same, he's been around a long time. Along with
11 Mike Williams, you know, they're pretty big rappers amongst
12 the Crips.

13 Q So he's been around the precinct for some time. Have
14 you debriefed him?

15 A I believe so, yes.

16 Q Had you arrested him?

17 A Not physically, no.

18 Q Were you there when he was arrested?

19 A I -- I can't recall a specific incident.

20 MS. GLASHAUSSER: I would like to play the video
21 that is marked -- it's already in evidence as GX8. If we
22 could have the screen?

23 Q Can you see the video, Sergeant Donohue?

24 A Yes.

25 MS. GLASHAUSSER: And, Your Honor, can you see the

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1 video.

2 THE COURT: I can see it.

3 MS. GLASHAUSSER: I'm going to play the video.

4 (Video plays.)

5 Q Is this the video that we have been talking about that
6 your commanding officer sent you?

7 A Yes, it is.

8 Q I would like you to tell me when you recognize someone.

9 A Okay. Do you want me to say who?

10 Q Yes.

11 A I recognize the victim in the top of our screen. He
12 has a pink do-rag on.

13 I recognize Mike Williams, he's at the bottom of
14 the screen with a black do-rag on.

15 And I recognize Tegan Chambers. He's behind Mike
16 Williams with the bigger hair and a black shirt.

17 (Video stops.)

18 BY MS. GLASHAUSSER:

19 Q The person you're describing in the black shirt as
20 Tegan Chambers, that person is turning and facing the
21 camera, right?

22 A That's correct.

23 Q And you can see his facial features, correct?

24 A That's right.

25 Q And the person who you described as Mike Williams in

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1 the black do-rag and maybe a blue shirt? I apologize. I
2 didn't hear what you said?

3 A I believe I said black shirt.

4 Q A black shirt. He also turned to face the camera --

5 A Correct, yes.

6 Q -- a second ago, right?

7 A Yes.

8 Q And the victim, you can't see his face in this video,
9 right?

10 A No.

11 Q But you knew who he was when you were watching the
12 video?

13 A I knew who he was because I have prior knowledge as to
14 who the victim was.

15 Q Right.

16 Let me keep playing the video.

17 (Video plays.)

18 (Video stops.)

19 BY MS. GLASHAUSSER:

20 Q And then at 29 seconds, the person you described as
21 Mike Williams turns and faces the camera again, right?

22 A That's correct.

23 Q And you can see his facial features?

24 A You can.

25 Q I'm going to keep playing the video.

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1 (Video plays.)

2 (Videos stops.)

3 BY MS. GLASHAUSSER:

4 Q And at 32 seconds, the person you described as Tegan
5 Chambers turns and faces the video as well?

6 A That's correct.

7 Q And you can see his facial features as well?

8 A That's correct.

9 I recognize somebody else.

10 Q Who?

11 A They're not going to face the camera until they go up.
12 Darell Woodford.

13 Q Okay. And can you describe who?

14 A He's a man, got no hat on, white shirt, black and white
15 shorts, basketball shorts.

16 Q Okay. And that person is not facing the camera; is
17 that right?

18 A Not yet, no.

19 (Video plays.)

20 (Video stops.)

21 BY MS. GLASHAUSSER:

22 Q Right there?

23 A Oh, back.

24 Q I'll back it up.

25 (Video plays.)

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1 (Video stops.)

2 A Right there.

3 BY MS. GLASHAUSSER:

4 Q You can't see that person's facial features; is that
5 right?

6 A I know who he is by his body style and his face and his
7 hair.

8 Q Can you see that person's facial features?

9 A I can. It's not clear, but I can see his face.

10 THE COURT: You said you recognized him by his
11 hair and what else, his body?

12 THE WITNESS: His hair, his body style.

13 THE COURT: What is it about his hair that you
14 recognize?

15 THE WITNESS: He's got a Cesar, close-cut hair.

16 THE COURT: What is the Caesar close-cut? Caesar
17 is what?

18 THE WITNESS: Just a close-cut haircut.

19 THE COURT: So is it uniformly short everywhere or
20 is there more hair other places.

21 THE WITNESS: I mean, I guess a little shorter on
22 the sides, if that's described perfectly.

23 THE COURT: Okay.

24 BY MS. GLASHAUSSER:

25 Q And this person's face on the video is blurry; is that

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1 right?

2 A Yes.

3 MS. GLASHAUSSER: Okay. I'm going to close the
4 video.

5 Q You had testified a couple weeks ago that you watched
6 that video on the side of the road, right?

7 A That's correct.

8 Q What did you do after you watched the video?

9 A I believe I sent it to Vasilopoulos and then I called
10 him.

11 Q Why did you send it to Vasilopoulos?

12 A He's my assistant and we were talking about information
13 sharing. It's how we go about things like that.

14 Q What did you tell him when you sent it to him?

15 A I said, Watch this.

16 Q You said that -- well, how did you send it to him?

17 A I don't remember if I e-mailed it or I texted it to
18 him. I really can't recall.

19 Q Okay. And then you called him?

20 A I called him or he called me, I don't remember, but we
21 were talked on the phone.

22 Q And what did you say to him?

23 A I let him watch the video and I remember his reaction
24 was something along the lines of, Oh, boy.

25 Q So he watched the video while you were on the phone

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1 with him?

2 A Yes.

3 Q And he said, Oh, boy?

4 A Something along those lines. It was surprise.

5 THE COURT: So he watched the video at the same
6 time he talked to you on the phone?

7 THE WITNESS: Yes.

8 BY MS. GLASHAUSSER:

9 Q When you called him, did you tell him that there had
10 been a shooting?

11 A No. He was aware of the shooting earlier, I believe.

12 Q Well, did you tell him the victim's name?

13 A I don't believe so. I believe he already knew it.

14 Q Did you tell him that the 67th thought that Pudge Boom
15 was in the video?

16 A I'm sure I would have said that almost in a laughing
17 way -- like saying it in jest.

18 Q And why would it be in jest?

19 A Because the people in that video are very well-known in
20 Brooklyn South.

21 Q Meaning you conveyed that you thought it wasn't Pudge
22 Boom in the video?

23 A Correct.

24 Q And did you tell him there are people in the video that
25 are very well-known in Brooklyn South?

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1 A I didn't have to. Officer Vasilopoulos knows these
2 people better than I do. He's probably the best one with
3 them.

4 THE COURT: So the answer is you didn't talk to
5 Vasilopoulos while he was watching the video about who he
6 saw or for identifying anyone in the video?

7 THE WITNESS: No.

8 BY MS. GLASHAUSSER:

9 Q Well, what did he say other than, Oh, boy?

10 A I'm -- I don't remember exactly. I -- I know it was --
11 we were worried about retaliation, so we probably discussed
12 that.

13 Q Why were you worried about retaliation?

14 A Usually when something like that occurs between two
15 gangs, there's retaliation. And being that the 8 Trey
16 Cowboy Crips are -- their mainstay is in the 70th Precinct,
17 we were worried about that.

18 Q So you told him you were worried about retaliation?

19 A I don't know if I said it specifically like that, but
20 yes, I definitely conveyed it.

21 Q And that's one of the reasons you were having him watch
22 the video, right?

23 A I don't know specifically. I mean, I sent him the
24 video because he's my assistant, that's how we share our
25 information with one another.

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1 Q Right. Because you would need to share information if
2 you were worried about retaliation in your precinct,
3 correct?

4 A Right.

5 Q And you would want to make sure he had all the
6 necessary information to assess what to do?

7 A Correct.

8 Q So what gang might retaliate?

9 A Correct.

10 Q And who they would be retaliating against; is that
11 right?

12 A Correct.

13 Q Who else did you call after watching the video or
14 contact?

15 A I definitely contacted one of my special operations
16 lieutenants, either Lieutenant Beaubois or
17 Lieutenant Epstein to just give them a heads-up as to where
18 our -- where our crime teams and whatnot should be
19 patrolling and covering to prevent retaliation.

20 Q Were those people on duty at the time?

21 A I believe -- I believe so. I can't remember
22 specifically if they were. They were south.

23 Q Because Officer Vasilopoulos was already on his way
24 home, too, right?

25 A I believe so, yes.

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1 Q Like you, right?

2 A Yes.

3 Q Well, did you call the lieutenants first?

4 A I don't remember specifically who I called.

5 Q What about your commanding officer?

6 A I definitely would have called him. I don't remember
7 specifically what I said, but I did relay the message to
8 him.

9 Q What was the message to him?

10 A That this is involving -- not involving Pudge Boom,
11 it's involving our 8 Trey Cowboy Crips.

12 THE COURT: Did you tell us what gang, if any,
13 Pudge Boom was involved with?

14 THE WITNESS: I believe he's a Blood.

15 THE COURT: A what?

16 THE WITNESS: A Blood.

17 THE COURT: Thank you.

18 Go ahead.

19 BY MS. GLASHAUSSER:

20 Q Did you call Officer Lopez?

21 A I don't remember.

22 Q The other people in your little -- your small team,
23 your small intelligence team?

24 A Well, I -- I don't -- I don't remember if I called
25 Lopez or asphalt him, but the information was spread amongst

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1 my team.

2 Q Did you give the information to anyone in the
3 67th Precinct?

4 A I believe I told the intelligence officer also.

5 Q And what did you tell them?

6 A I told them who was in the video.

7 Q So we've been talking about that your commanding
8 officer, James Palumbo, sent you this video. He sent that
9 in an e-mail, right?

10 A I believe so, yes.

11 Q I am going to show you what I will mark as
12 Defendant's Exhibit B for identification.

13 Do you recognize this as the e-mail that your
14 commanding officer sent you?

15 A Yes, I do.

16 MS. GLASHAUSSER: I would like to move
17 Defense Exhibit B into evidence, Your Honor.

18 MS. REID: No objection.

19 THE COURT: We will receive in evidence
20 Defense Exhibit B.

21 (Defendant's Exhibit B so marked and received in
22 evidence.)

23 BY MS. GLASHAUSSER:

24 Q So looking at Defense Exhibit B, it looks like James
25 Palumbo sent you the video at 10:59, right?

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1 A That's correct.

2 Q Who else did he send it to?

3 A I don't know.

4 MS. REID: Objection.

5 MS. GLASHAUSSER: It appears that the video was
6 sent to numerous people, but they are redacted.

7 MS. REID: And I would object as grounds of
8 relevance, Your Honor, and...

9 THE COURT: Well, was one of the redacted names
10 Officer Vasilopoulos --

11 THE WITNESS: I --

12 THE COURT: -- Ms. Reid?

13 MS. REID: No, it's not, Your Honor.

14 THE COURT: All right.

15 Why is it relevant to know who else got it when we
16 are disputing and moving to suppress the identifications of
17 Sergeant Donohue and Officer Vasilopoulos?

18 MS. GLASHAUSSER: Well, Your Honor,
19 Sergeant Donohue doesn't remember how -- what was conveyed
20 to him or how he learned various things about the shooting,
21 and I'm trying to figure out how that information was
22 disseminated to him and to other officers in his team or in
23 the 67th Precinct.

24 And I -- I don't know what is under the redacted
25 box, but I am -- I think it is relevant. If it was to

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1 members of his team or two officers in the 67th Precinct,
2 who else was also viewing the video and that -- perhaps that
3 would help refresh Sergeant Donohue's recollection of how he
4 came to learn about the shooting, the victim and the other
5 information about the shooting.

6 THE COURT: Why don't you ask him first about how
7 he came to learn about the shooting, whether he learned
8 about it for the first time from Commander Officer Palumbo
9 as he was on route home or whether he learned about it
10 before he left work that day?

11 MS. GLASHAUSSER: I believe the sergeant has
12 answered that question. But I can ask it again.

13 THE COURT: Thank you.

14 BY MS. GLASHAUSSER:

15 Q Sergeant, you learned about the shooting while still at
16 the precinct, right?

17 A Correct.

18 MS. REID: And, Your Honor, I think he's testified
19 about his recollection of what he remembers. I don't think
20 redacted e-mail addresses will change that and I don't
21 believe they're relevant.

22 MS. GLASHAUSSER: Your Honor, I need to ask
23 Ms. Reid to bring the unredacted copy so that perhaps
24 Your Honor or Sergeant Donohue can look at it and see if the
25 names are relevant. I'm not sure if they are because I'm

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1 not sure what the names --

2 THE COURT: So what is at issue in this hearing is
3 the identification by Sergeant Donohue and
4 Officer Vasilopoulos. So he testified as to what he did
5 when he received Mr. Palumbo's e-mail or whatever this is.
6 It looks like an e-mail, with the Nostrand Avenue D video
7 attached.

8 MS. GLASHAUSSER: That is correct, Your Honor.

9 THE COURT: And how he made the identification or
10 what he identified.

11 MS. GLASHAUSSER: That is correct, Your Honor, but
12 he --

13 THE COURT: So it's not really relevant what other
14 officers might have thought or seen, if they saw anything,
15 or gotten anything at all.

16 MS. GLASHAUSSER: It's relevant what
17 Sergeant Donohue knew before watching the video. And we
18 know he knew the shooting victim's name, where the shooting
19 was. He doesn't recall how he learned that information and
20 perhaps knowing which other officers or wherever they are
21 were involved in this investigation at this stage may
22 refresh his recollection as to how he learned the
23 information and what additional information he learned.

24 THE COURT: All right.

25 Did you speak to any other officers about the

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1 video before you watched it, Sergeant Donohue.

2 THE WITNESS: No. It would have only been
3 Inspector Palumbo. He would have been the only one that I
4 spoke to.

5 THE COURT: And when you received this from
6 Inspector Palumbo, you then watched the video?

7 THE WITNESS: Yes, in my personal car.

8 THE COURT: Did you reach your identification of
9 the various individuals that you named in the video from any
10 other source other than your own observation of it?

11 THE WITNESS: I did not.

12 THE COURT: I do not think the names of the other
13 recipients, assuming that is what was redacted are relevant,
14 Ms. Glashausser.

15 BY MS. GLASHAUSSER:

16 Q So, Sergeant Donohue, the next day, August 31st, if we
17 go up in the exhibit, you e-mailed this video to
18 Officer Vasilopoulos, right?

19 A Yes. That's what it looks like.

20 Q Why did you do that?

21 A I -- I don't -- I don't remember.

22 Q Well, this is the same video that you testified you had
23 sent to him on August 30th, right?

24 A Yes, it is.

25 Q And then if we keep scrolling up, you then -- it looks

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1 like you e-mailed it to yourself at some unknown date,
2 right?

3 A Yes.

4 Q When was that?

5 MS. REID: Objection. Your Honor, this is not
6 relevant.

7 THE COURT: Okay. I am giving you a lot of
8 latitude, Ms. Glashausser. I am just not sure you are
9 focusing on or making a case for relevance.

10 He testified about getting the video, observing
11 it, and trying to identify who is depicted in it. He
12 testified he had conversations after that, and he testified
13 about whether or not there were any conversations about the
14 video before he observed it. What is your proffer of
15 relevance to ask him when he might have e-mailed this video
16 to himself?

17 MS. GLASHAUSSER: Well, Your Honor, in
18 identification what information is known before the
19 identification and what information has been made after the
20 identification are both relevant to how suggestive or how
21 reliable the identification is.

22 THE COURT: And we have gotten that from this
23 witness. But then my question to you that you have not yet
24 answered is, why is it relevant as to when he e-mailed this
25 video or e-mailed something to himself -- it looks like he

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1 might have e-mailed the video to himself.

2 MS. GLASHAUSSER: Honestly, Your Honor, I'm not
3 sure why he did.

4 THE COURT: Well, why does it matter?

5 MS. GLASHAUSSER: Because I believe that the
6 officer's credibility about the identification includes what
7 he did afterwards and what steps he took subsequent to
8 viewing the video. That goes to how sure he felt in the
9 identification, how strong he believed the identification
10 was. And the events that followed in the days immediately
11 subsequent to viewing the video are directly relevant to
12 that.

13 THE COURT: But you just noted that this e-mail is
14 undated and it's not clear when he might have sent it to
15 himself. I just -- look, we want to get this concluded,
16 right? And I don't think you are necessarily pursuing
17 relevant information by asking the question regarding the
18 date, which is not apparent on the face of the video -- I
19 mean, of the e-mail. The date is not apparently on the
20 e-mail as to when Sergeant Donohue e-mailed the video of
21 Nostrand Avenue D to himself.

22 MS. GLASHAUSSER: I'll move on, Your Honor.

23 THE COURT: All right, good.

24 BY MS. GLASHAUSSER:

25 Q Sergeant Donohue, at some point you also received a

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1 video of the shooting, right?

2 A Yes.

3 Q When did you receive that?

4 A I received it later on that night.

5 Q Who sent it to you?

6 A Once again, I'm sorry, I really don't recall that.

7 MS. GLASHAUSSER: I would like to play for you
8 what's been admitted as Government's Exhibit 9A.

9 (Video plays.)

10 (Video stops.)

11 MS. GLASHAUSSER: I apologize, Your Honor. I'm
12 going to start it again with the video.

13 (Video plays.)

14 (Video stops.)

15 BY MS. GLASHAUSSER:

16 Q Sergeant Donohue, is this the video you saw on
17 August 30th?

18 A Yes, yes.

19 Q And this seems to be a video that's recorded from a
20 computer, right?

21 A Yes.

22 THE COURT: What do you mean, from a computer?

23 Q Well, at the top of the screen we have what looks like
24 the player of the computer and we hear people talking in
25 background, right?

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1 A Correct.

2 Q Do you know who is speaking?

3 A I don't.

4 Q Do you know who recorded this video?

5 A I do not.

6 Q But this is the one that was sent to you?

7 A I -- I would have to see the whole thing in whole, but
8 yes, I believe so.

9 Q I'll play it. It's short.

10 (Video plays.)

11 (Video stops.)

12 A Yes.

13 Q Okay. So did you recognize that person speaking at the
14 end?

15 A I didn't.

16 Q And in this video you see a shooter, right?

17 A Yes.

18 Q You can tell it's a black man, right?

19 A Yes.

20 Q And you can see the person's clothing?

21 A Correct.

22 Q You can't see the features of the person's face in this
23 video?

24 A Not the features of his face.

25 Q Did you try to enhance this video to make the picture

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1 better?

2 A Not me personally, no.

3 Q Did someone else try to enhance it?

4 A I -- I believe -- I don't understand. I'm sorry.

5 Q To make the video clearer?

6 A I don't know if anybody else tried to. This was the
7 video I saw.

8 Q Well, when you say that you personally didn't enhance
9 it, is the -- do you know that somebody else did?

10 A No. Well, I -- well, later I saw a clearer video. But
11 not later that night. That night this is the video that I
12 saw.

13 Q And did you reach out with anyone in the facial --
14 excuse me.

15 Did you reach out to anyone in the facial
16 recognition unit?

17 A I did not.

18 Q And what did you do after reviewing this video?

19 A Do like officially? Official capacity --

20 Q Yes.

21 A Not anything. That's all.

22 Q And did you talk to Officer Vasilopoulos about this
23 video?

24 A Yes.

25 Q When?

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1 A We were talking all night about this. We were on
2 social media and whatnot to see if there was any chatter
3 regarding the incident.

4 Q So were you talking with him while you were watching
5 this video?

6 A I don't remember if we were talking specifically while
7 we were watching it, but we watched it. We talked -- we
8 talk off and on all night.

9 THE COURT: You talked all night, you said?

10 THE WITNESS: Well, not all night, I'm sorry. But
11 for a few hours, yes.

12 THE COURT: Okay.

13 BY MS. GLASHAUSSER:

14 Q So this video you saw on August 30th, right?

15 A No. I believe the morning of the 31st I would have
16 seen it.

17 Q You were still in the middle --

18 A Yeah. Still during the same incident, yes.

19 Q In the middle of the night?

20 A Yes.

21 Q In the early morning hours?

22 A Early morning hours.

23 Q So August 30th to August 31st, right?

24 A Yes.

25 Q And am I right that the first police report you made

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1 about identifying someone in the video was on
2 September 15th?

3 A If that's the date on my report, then yes.

4 Q Okay. I can pull up 3500 CD1 to refresh your
5 recollection.

6 Do you recognize that as your identification
7 report?

8 A Yes, I do.

9 Q And that's dated September 15th, right?

10 A Correct.

11 Q And that's the only identification report you made
12 about this case, right?

13 A Yes.

14 Q And September 15th was the day after you arrested
15 Mr. Woodford, right?

16 A I believe so.

17 Q When you recognized, or when you said that you
18 recognized the person in this video as Mr. Woodford, did you
19 notify his parole officer?

20 A I didn't personally, no.

21 Q Did someone else in your unit?

22 A Not in my unit.

23 Q Do you know, did somebody?

24 A Well, I believe somebody did. I don't know
25 specifically who it was, but somebody did because a warrant

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1 was issued.

2 Q Well, a parole warrant was issued in September; is that
3 right?

4 A I believe the same day we arrested him, yes.

5 Q September 14th?

6 A Yes.

7 Q Okay. But on August 31st no one notified his parole
8 officer?

9 A Not that I recall.

10 Q And you didn't seek an arrest warrant for him?

11 A I did not.

12 Q Why not?

13 A This was the 67th squad's case, not mine.

14 Q Well, did you tell someone in the 67th Precinct what
15 you believed you had seen in the video?

16 A I told my commanding officer and he -- I also told the
17 other field intelligence officer.

18 Q And their field intelligence officer didn't seek an
19 arrest warrant?

20 A Not that I know of.

21 Q And after August 30th a wanted poster was made related
22 to this shooting, right?

23 A Well, once again, if you show it to me, but I believe
24 so.

25 Q I'm showing you what will be marked for identification

Donohue - Direct - Glashausser

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1 as Defense Exhibit C, as in "cat."

2 Can you see it --

3 A Yes.

4 Q -- if I put it up here?

5 A Yes.

6 Q And this is a wanted poster that was issued for the
7 shooting, right?

8 A I -- I -- that's what it says, yes.

9 Q And in the wanted poster it says that the person's name
10 is Unknown. Unknown, right?

11 MS. REID: Your Honor, I'm going to object. It's
12 not in evidence. I don't know that he can lay the
13 foundation for it. It appears that he hasn't seen it
14 before.

15 MS. GLASHAUSSER: Well, if I may, Your Honor?

16 THE COURT: Go head.

17 BY MS. GLASHAUSSER:

18 Q Sergeant Donohue, when wanted posters are issued, one
19 of the purposes is to get them out to as many people as
20 possible, right?

21 A Yes.

22 Q Both to officers?

23 A Yes.

24 Q And to the public?

25 A Yes.

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1 Q So that somebody may call in about information; is that
2 right?

3 A Correct.

4 Q And you can access wanted posters through the NYPD
5 police system, right?

6 A I can.

7 Q And you, as you said, had been up all night
8 investigating this shooting, right, or talking about the
9 shooting and what to do?

10 A Correct.

11 Q So this was something that was important to your
12 precinct as well?

13 A Correct.

14 Q So were you aware that a wanted poster was put out
15 about this shooting?

16 A I was not.

17 Q So you didn't follow-up on what was happening with this
18 investigation?

19 MS. REID: Objection.

20 A I did, but I didn't see a wanted poster, though.

21 Q And no one from -- the field intelligence officer in
22 the 6, 7 didn't call you and say we're putting out a wanted
23 poster about the shooting?

24 MS. REID: Objection, Your Honor. I think it's
25 been asked and answered.

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1 THE COURT: Well, I will allow him to answer this
2 one.

3 Go ahead.

4 A No, he didn't.

5 BY MS. GLASHAUSSER:

6 Q Did you and that person, the field intelligence officer
7 continue to contact each other as this investigation
8 progressed?

9 A Off and on, yes.

10 Q All right. So he kept you informed about what was
11 happening?

12 A As much as he knew. It wasn't his investigation either
13 even though it's his command. It's the detective squad's
14 investigation.

15 Q And the NYPD keeps Twitter accounts, right?

16 A Yes.

17 Q And you testified that you're familiar with social
18 media review, right?

19 A Correct.

20 Q Do you check the NYPD Twitter accounts?

21 A Not frequently.

22 Q Well, are you aware of what is posted on the NYPD
23 Twitter account?

24 A No.

25 Q When you create a wanted poster if you have a name of a

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1 suspect, do you print it on the wanted poster?

2 A I don't specifically create wanted posters. That's the
3 detective squad's job.

4 Q Okay. Well, typically, do they put the name of the
5 suspect so that people can call in with information about
6 that person?

7 A That's up to them with whatever information they have.

8 Q Right.

9 A I can't speak to what they do with on a specific
10 investigation.

11 Q Right. But if they have the information, that would be
12 something to put on the wanted poster?

13 A I believe so.

14 Q Mr. Woodford was not arrested immediately after the
15 shooting, right?

16 A He was not.

17 Q So he was arrested on September 14th, right?

18 A Yes.

19 Q And he was on parole, right?

20 A Yes.

21 Q So you at the NYPD knew where to find him; is that
22 right?

23 A Do you mean like an address?

24 Q Yes.

25 A Yeah.

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1 Q And a phone number?

2 A I know about an address. I don't know about a phone
3 number, but definitely an address is listed on his parole
4 contact.

5 Q People on parole have to give a phone number as well,
6 right?

7 A I can't say yes or no to that, I'm not 100 percent
8 sure. Definitely an address, I don't know about a phone
9 number.

10 Q You're not able to look up the phone number of people
11 on parole?

12 A I'm not a hundred percent sure about that.

13 Q Well, in this case, the 70th Precinct remained involved
14 in the case through Mr. Woodford's arrest, right?

15 A Yes.

16 Q And when he was arrested, he was taken to the
17 70th Precinct, right?

18 A That's correct.

19 Q And he was interrogated at the 70th Precinct as well,
20 right?

21 MS. REID: Objection.

22 THE COURT: Relevance again?

23 MS. REID: Yes.

24 MS. GLASHAUSSER: Well, Your Honor, I believe the
25 sergeant is saying that to some of the questions he doesn't

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1 know the answers because it was the 67th Precinct that was
2 investigating. But I believe the record shows that the
3 70th Precinct was actively involved.

4 THE COURT: Well, the point is whether his
5 post-arrest questioning at the 67th or the 70th bears on the
6 issues in this suppression hearing, which is whether or not
7 Sergeant Donohue and Officer Vasilopoulos made an
8 appropriate identification of Mr. Woodford.

9 So again, I think --

10 MS. GLASHAUSSER: Yes, Your Honor, I'll move on.

11 THE COURT: Ms. Glashausser, I mean, you would
12 save us all a lot of time if you could stay focused on the
13 issues that you have brought before the Court, which is
14 whether or not the identification by these two officers
15 should be suppressed.

16 BY MS. GLASHAUSSER:

17 Q Sergeant Donohue, in this case you also saw another
18 video on September 14th, right?

19 A I -- I believe so.

20 Q And that was a video of a deli on Nostrand and
21 Avenue D, right?

22 A If I could see like a photo from it to be able to say
23 yes?

24 Q I'll show you what was marked as
25 Government's Exhibit 11.

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1 MS. GLASHAUSSER: And I don't believe this was
2 admitted to into evidence yet.

3 MS. REID: And I ask that it be marked eventually
4 as an defense exhibit. We didn't put it into evidence,
5 Your Honor.

6 THE COURT: All right.

7 MS. REID: And I don't object to it coming in.

8 THE COURT: Do you want to just mark it as a
9 defense exhibit, then, please, so we can save time.

10 What exhibit do you want to mark it as,
11 Ms. Glashausser?

12 MS. GLASHAUSSER: Defense Exhibit D, as in
13 "David," Your Honor.

14 THE COURT: If you want to move it in and there's
15 no objection, we'll receive it. Thank you.

16 (Defendant's Exhibit D so marked and received in
17 evidence.)

18 BY MS. GLASHAUSSER:

19 Q Sergeant Donohue, was this the video that you saw on
20 September 14th?

21 A Yes.

22 Q And you were with Officer Vasilopoulos when you watched
23 this video, right?

24 A We were in the same office, yes.

25 Q And you were also with an FBI agent; is that right?

Donohue - Direct - Glashausser

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1 A Yes.

2 Q And that FBI agent was investigating the shootings,
3 right?

4 A Correct.

5 Q And how did this meeting get arranged?

6 A I believe a special agent contacted
7 Officer Vasilopoulos and told us that he was coming to our
8 office to see the video.

9 Q Did he tell you what the video was related to?

10 A He did not. He didn't give any of us any specifics of
11 it.

12 Q Well, you knew he was investigating the shootings,
13 right?

14 A Right. That was the only case we were working on
15 together.

16 Q You and the special agent?

17 A Yes.

18 Q So does he say anything else to you before showing you
19 the video?

20 A No, just to watch it.

21 Q And what was said between you and Officer Vasilopoulos
22 while you were watching it?

23 A I can't recall anything specific being said.

24 Q Well, who identified somebody first?

25 A You know, I don't recall exactly who identified who

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1 first.

2 Q And did you watch this video before Mr. Woodford was
3 arrested; do you remember?

4 A Yes.

5 Q And in the same meeting with the FBI,
6 Officer Vasilopoulos pulled up an Instagram page from Tyrese
7 Battle, right?

8 A Later on he did, yes.

9 THE COURT: Later on that day?

10 THE WITNESS: Yes, during the same interaction.

11 THE COURT: And that was an Instagram or what was
12 it?

13 THE WITNESS: I believe it was Instagram.

14 THE COURT: And it was retrieved by
15 Officer Vasilopoulos?

16 THE WITNESS: That is correct.

17 BY MS. GLASHAUSSER:

18 Q Why did that happen?

19 A I believe he recognized him in the video.

20 Q Officer Vasilopoulos?

21 A Correct.

22 Q But you didn't recognize him in the video?

23 A I'm not as familiar with Mr. Battle as
24 Officer Vasilopoulos is.

25 Q And Officer Vasilopoulos didn't pull up any photos of

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1 Mr. Woodford during that meeting?

2 A I don't believe so.

3 Q He didn't pull up Mr. Woodford's Facebook?

4 A I don't believe so.

5 Q Or his Instagram?

6 A I don't believe so.

7 Q And was there a point that you saw another video that
8 was from August 29th, the day before the shooting?

9 A Once again, if you could show me that?

10 Q Sure.

11 MS. GLASHAUSSER: Your Honor, what is premarked as
12 Government's Exhibits A and B and it is becoming
13 Defense Exhibit E.

14 MS. REID: And I wouldn't object, Your Honor.

15 THE COURT: Defense B, as in "boy"?

16 MS. GLASHAUSSER: E as in "elephant."

17 THE COURT: Defendant's Exhibit E. And this is
18 the video?

19 MS. GLASHAUSSER: From August 29, 2018.

20 A Yes, I saw this.

21 BY MS. GLASHAUSSER:

22 Q And this is a video inside a deli at 1990 Bedford
23 Avenue?

24 A I believe that's the location, yes, the address.

25 Q When did you see this video?

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1 A I don't know.

2 Q Well, how did you come to see it?

3 A It was shown to me at some point. I don't know who
4 showed it to me or -- or where.

5 Q What information did you have about the video before
6 watching it?

7 A I think I knew it was related to this entire incident,
8 but I don't remember a specific conversation.

9 Q Did you write any sort of report about getting the
10 video?

11 A Not that I can recall, no.

12 Q Was there any sort of witness who had identified people
13 from this deli?

14 A I -- I don't -- I don't know.

15 Q You don't know. Okay.

16 I have been asking you a lot of questions about
17 what exactly was said. I recognize those are hard
18 questions. When you're in your field intelligence unit,
19 you're really just sharing information among you and your
20 officers, right?

21 A Correct.

22 Q You work closely together, the four of you?

23 A Yes.

24 Q You speak often?

25 A Very often.

Donohue - Direct - Glashausser

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1 Q You know each other's personal phone numbers?

2 A Not off the top of my head, well, but it's in my phone,
3 yeah.

4 Q But you're able --

5 A Yes.

6 Q -- to contact each other --

7 A Yes.

8 Q -- even when you're off the job?

9 A Yes.

10 Q And you're sharing information as you get it; is that
11 right?

12 A Yes.

13 Q And when you get information, like on August 30th about
14 a shooting, you were worried about what would happen in your
15 precinct, right?

16 THE COURT: It has been asked and answered. He
17 has already testified to this.

18 My point is you are retreading testimony that has
19 already been put into the record, so you need not do that
20 again.

21 MS. GLASHAUSSER: Understood, Your Honor.

22 Your Honor, I believe I have a few questions that
23 have not been asked, but I am sure Your Honor will tell me
24 if I have.

25 THE COURT: Well, I am trying to just give you an

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1 opportunity but not to repeat ground that you have already
2 covered.

3 MS. GLASHAUSSER: Understood.

4 THE COURT: He testified about his reaction on
5 August 30th after reviewing his video and his concern, so
6 you should move on.

7 MS. GLASHAUSSER: Thank you, Your Honor.

8 BY MS. GLASHAUSSER:

9 Q Well, Sergeant Donohue, you weren't holding back
10 information when you were talking to Officer Vasilopoulos on
11 August 30th; isn't that right; you wanted him to know what
12 you knew?

13 MS. REID: Objection.

14 THE COURT: Yes. I think you need to rephrase
15 your question there.

16 (Continued on the next page.)
17
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25

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1 THE COURT: The question, you weren't holding back
2 information from Officer Vasilopoulos about what? When? I
3 just don't know --

4 MS. GLASHAUSSER: Understood, Your Honor.

5 THE COURT: Just reframe your question.

6 MS. GLASHAUSSER: Thank you.

7 DIRECT EXAMINATION (Continued)

8 BY MS. GLASHAUSSER:

9 Q On August 30th when were you talking to
10 Officer Vasilopoulos about this shooting --

11 A Yes.

12 Q -- you weren't holding back information that you knew
13 about the shooting, right?

14 A No.

15 Q You weren't worried that you might tell him too much
16 information.

17 A No.

18 Q You wanted to tell him everything that you knew.

19 A When I sent him the video, I believe that said it all.

20 Q But you also spoke to him, right?

21 A Yeah.

22 Q And you wanted him to know all the information about the
23 shooting that you knew.

24 A Yes. As I was learning it, yes.

25 Q Right. As you were learning it. So you --

Donohue - Direct - Glashausser

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1 A Yes.

2 Q So you could react, right?

3 Have you received training on identification
4 procedures at the NYPD?

5 A I attended a detective bureau CIC course. I believe that
6 was one of the things. But I'm not a hundred percent.

7 Q Well, did you receive training about how to take a
8 witness to do a lineup?

9 MS. REID: Objection. As to relevance, Your Honor.

10 THE COURT: Yes, I -- we don't have a lineup
11 situation here, right?

12 MS. GLASHAUSSER: That's right, Your Honor.

13 THE COURT: So please.

14 MS. GLASHAUSSER: One of the issues is how different
15 this was from a lineup situation.

16 THE COURT: Well, we all agree it's different from a
17 lineup.

18 You don't have a number of individuals being viewed
19 by a witness or a victim. You have officers who identified a
20 particular individual based on what they've testified about.

21 BY MS. GLASHAUSSER:

22 Q And when do you a lineup you take precautions not to tell
23 the witness --

24 MS. REID: Objection.

25 THE COURT: This is not a lineup, Ms. Glashausser.

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1 I think you know that. So I don't know why you're asking
2 about a lineup.

3 MS. GLASHAUSSER: Well, Your Honor, I believe that
4 the differences between what the correct identification
5 procedure would be like are relevant to this hearing in which
6 something very different occurred.

7 THE COURT: Ask him what occurred here to the extent
8 he hasn't already answered your questions on that. And you
9 can make an argument about whether or not you think there's
10 any issues regarding the way these officers identified
11 specific individuals after viewing videos or based on their
12 personal encounters or observations or investigations or other
13 videos they might have seen. That's what we're at issue --
14 that's what's at issue here, not what happens in a lineup.

15 I don't think you can necessarily pigeonhole what
16 happened here into a lineup analogy. It's just a different
17 situation.

18 BY MS. GLASHAUSSER:

19 Q Sergeant Donohue, when you were having -- when you and
20 Officer Vasilopoulos viewed the video, the fight video on
21 August 30th, the first video that you viewed, at any point did
22 you or he say the names of the people that you believed were
23 in the video?

24 A I don't believe we said specifically that's so and so,
25 that's so and so. I believe the names came out as we talked.

Donohue - Direct - Glashausser

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1 We both know who they were. It wasn't necessary to just say
2 that, you know, oh, there's Mike Williams, oh, there's Steven
3 Chambers, oh, there's Darrell Woodford. That wasn't -- we
4 know who they are.

5 Q So you say the names came out as you were talking. So
6 did you discuss who the people were?

7 A We didn't. I mean, we knew who they were. We didn't
8 say -- I'm sorry, I'm kind of confused by what you mean
9 specifically.

10 Q Well, what do you remember about the discussion with
11 Officer Vasilopoulos about who was in the video?

12 A That we were talking about it and then we started
13 checking our social media as well as of their associates.

14 Q So checking social media, is that a big part of your job?

15 A Very big.

16 Q And were you trained in how to that a social media
17 review?

18 A No.

19 Q Well, how did you learn what to do?

20 A From my personal life, I know how to use social media; my
21 personal experiences.

22 Q But how do you use it in your official capacity is
23 different than how you use it in your personal life, right?

24 A I don't believe so.

25 Q Well, how do you use social media in your official

Donohue - Direct - Glashausser

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1 capacity?

2 A Just viewing what people are posting to their pages.

3 Q Why?

4 A Because people put a lot of their personal business on
5 the social media accounts.

6 Q Were you checking social media while you were watching
7 the video on August 30th of the defendant?

8 A Not at the same time, no.

9 Q While were you having this discussion with
10 Officer Vasilopoulos?

11 A Not after the initial conversation. I didn't check
12 social media until I got home. Like I said, I was driving.

13 Q And so what do you do with the information you learn from
14 social media?

15 A If it's something major, I'll disseminate it.

16 Q How will you disseminate it?

17 A Word of mouth.

18 Q Well, social media is largely pictures, right?

19 A No. Social media is people writing stuff as well.

20 Q Okay. But a big part is pictures and videos, right?

21 A Yes.

22 Q Do you send the pictures and videos around when you're
23 trying to disseminate information?

24 A If I -- if there's a picture that I feel that needs to be
25 sent out, yes.

Donohue - Direct - Glashausser

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1 Q And how did you do that? Through what method of
2 communication?

3 A Through text message. Or through email.

4 Q Do you use your official email accounts to do it?

5 MS. REID: Objection.

6 THE COURT: I will allow the question.

7 A If I'm sending it out to the command, to the entire
8 precinct, yes, I'll use my official account.

9 Q What if you're just sending it to the other three members
10 of your field intelligence unit?

11 A It depends. I can send it from my official account or
12 from my phone.

13 Q You mentioned that you had seen one video -- sorry.

14 Moving your attention back to July, before the
15 July 17 car stop, you said you had seen one social media video
16 of the passenger before the stop, right?

17 A Correct.

18 Q Do you remember what that video was?

19 A It was a "Sheff G" video. I believe it was "*The*
20 *Realtest*."

21 Q And that was the only video you had seen involving the
22 passenger before that stop?

23 A The only one that I remember, yes.

24 Q Subsequent to the stop, do you remember seeing additional
25 social media that was relevant to this case?

Donohue - Direct - Glashausser

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1 A Not -- not that was relevant to this case. Probably to
2 the arrest.

3 Q I'm sorry, can you say that again. Prior to the
4 arrest --

5 A Prior to the arrest --

6 Q -- you had not seen --

7 A Not that was relevant. Not that I recall.

8 Q Well, do you remember seeing other social media involving
9 Mr. Woodford?

10 A I mean, there's other videos within that, yes. I
11 don't -- I can't pick a specific but, yeah.

12 Q When did you see other videos with him in it?

13 A We look at social media daily and I don't remember
14 exactly one.

15 Q Well, do you remember seeing anything -- is there any
16 video that you can describe that you remember seeing
17 Mr. Woodford in?

18 A I know there's one where they're in a house and they're
19 coming out dancing with bathrobes, and standing by Steven
20 Chambers and somebody else.

21 I really think that's the one that's coming to mind.
22 I can't think of anything else off the top of my head.

23 Q Had you seen photos of Mr. Woodford prior to August 30th
24 in the recidivism database?

25 MS. REID: Objection.

Donohue - Direct - Glashausser

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1 THE COURT: I'll allow the question.

2 A I don't recall if -- if it was prior to the incident or
3 after. But I do remember seeing him in that. Like I said, I
4 just don't remember if that was before or after August 30th.

5 MS. GLASHAUSSER: If I may have one moment, Your
6 Honor.

7 (Pause.)

8 Q Sorry. Do you share the same social media account with
9 Officer Vasilopoulos?

10 A We use the same one, yes.

11 Q So do the four people in your precinct -- excuse me, in
12 your field intelligence unit, you share the same account?

13 A We do.

14 Q So Sergeant Donohue, you've testified that you viewed
15 videos of this violent incident on August 30th and that you
16 identified a number of people in the videos, right?

17 A Yes.

18 Q Why did you not arrest those people?

19 A The investigation is not mine and when there's an
20 investigation involving a shooting, that's the 67th Precinct's
21 squad's case. I don't have authority to do that. Unless
22 something happens in front of my face, it's their
23 investigation.

24 Q Did you convey to them that you believed that they should
25 arrest the people in the videos -- excuse me, the people that

Donohue - Cross - Reid

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1 you told the 67th that were in the videos?

2 A I'm not part of their unit. I can't tell them to do
3 that. Their supervisor outranks me, so it's their call.

4 (Pause.)

5 MS. GLASHAUSSER: I think I have nothing further,
6 Your Honor.

7 THE COURT: All right. Does the government want to
8 sum up?

9 MS. REID: I have a couple of questions, Your Honor.

10 THE COURT: All right.

11 MS. REID: Thank you.

12 CROSS-EXAMINATION

13 BY MS. REID:

14 Q Good afternoon, Sergeant.

15 A Good afternoon.

16 Q I'd like to use the ELM0 or I can come up whatever
17 easiest.

18 THE COURT: The ELM0's there.

19 Q Sergeant, I just want to show you what's already in
20 evidence as Government Exhibit 2.

21 (Exhibit published.)

22 Q Do you recognize that?

23 A I do.

24 Q And what is that?

25 A That is Mr. Woodford.

Donohue - Cross - Reid

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1 Q And is this a picture from a Facebook account from June
2 of 2018?

3 A It is.

4 Q And did you see this picture in the summer of 2018?

5 A I had seen it before. I don't remember specifically when
6 I saw it, but it was right around that time, yes.

7 Q You also testified about watching a YouTube video called
8 "The Realist"; is that right?

9 A That's correct.

10 Q Did you see that video more than one time?

11 A Yes.

12 Q Did you see the defendant on that video?

13 A I did.

14 Q And approximately how many times did you watch that
15 video?

16 A Many times.

17 Q Did you watch the video many times over the summer of
18 2018?

19 A Yes, I did.

20 Q And I believe you testified that included before the car
21 stop on July 17th; is that right?

22 A That's correct.

23 Q And when you saw the defendant during the car stop on
24 July 17, you did you recognize him?

25 A I did.

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1 THE COURT: Just for clarification. This is in
2 reference to the passenger.

3 That passenger, is that the one you identified?

4 THE WITNESS: Yes, it was passenger. I'm sorry.

5 THE COURT: That was who?

6 THE WITNESS: It was the passenger. That was
7 Mr. Woodford that I recognized.

8 THE COURT: Okay. Thank you.

9 MS. REID: I have no further questions, Your Honor.

10 THE COURT: All right. Anything else,
11 Ms. Glashausser?

12 MS. GLASHAUSSER: No, Your Honor.

13 THE COURT: Okay. So you're excused. Thank you for
14 your time.

15 (Whereupon, the witness was excused.)

16 THE COURT: All right. So let's talk about where we
17 go from here.

18 I know that there were a number of letters found and
19 the identification by the parties. I think starting in --
20 starting on July 11th, 2019.

21 Oh, yes, would Mr. Woodford like to join his lawyer
22 at the table?

23 MS. GLASHAUSSER: Thank you, Your Honor.

24 (Defendant enters the courtroom.)

25 THE COURT: All right. Mr. Woodford is present.

1 Thank you.

2 At the conclusion of the first session of the
3 suppression hearing, I asked the government to find out what,
4 if any, logs the NYPD maintained regarding the officers' use
5 of social media to conduct investigations. Ms. Reid wrote a
6 letter indicating that logs were not maintained by the NYPD
7 that documented social media use by its officers as part of
8 their official duties.

9 The letter from the defendant dated July 11th, 2019,
10 which is document 44 in the docket, asks that -- the defendant
11 still believes that the evidence log does exist. The
12 government has access to it and that some sort of hearing must
13 be conducted.

14 I'm concerned that the parties may be talking about
15 two different things. The government has confirmed that the
16 NYPD itself does not have a log documenting the use of social
17 media.

18 Ms. Glashausser may believe that such a document
19 exists, but the government has represented that it doesn't
20 exist.

21 But Ms. Glashausser, later, I think refined her
22 request to talk about extracting information from the social
23 media accounts used by officers in Sergeant Donohue's unit at
24 the time to access social media.

25 And she described search histories which I think are

1 different than documentation about visiting certain users of
2 social media.

3 So the search history would, according to Mr. Weil's
4 own search of his search history, indicated what he searched
5 for when using his social media account, correct, Mr. Weil?

6 MR. WEIL: Yes, Your Honor.

7 THE COURT: But if you have regular people on your
8 social media account whose pages, or whatever they're called,
9 you visit regularly, that wouldn't necessarily pop up in the
10 search history, would it?

11 MR. WEIL: I -- I don't know if the Court prefer if
12 stand or I remain seated.

13 THE COURT: Whatever you prefer.

14 MR. WEIL: That did not pop up with the experiment I
15 did. There's no question that information is maintained. The
16 government's search warrant indicates that information is
17 maintained.

18 So the government indicated the response letter that
19 that it may be that pages were viewed without the search being
20 done. They indicated that in the most recent letter.

21 And if that is the case, the government's search
22 warrant clearly indicates that Facebook maintains in their
23 search warrant for Facebook, the Facebook profile, that
24 Facebook maintains a record that each time a page is visited.
25 So if they were to Mr. Woodford's Facebook account page, there

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1 would be a record of when they did that, maintained by
2 Facebook.

3 THE COURT: All right. I'm trying to understand the
4 defendant's view.

5 If the officers testified that they visited
6 different social media accounts of individuals whom they
7 believed were associated a the Eight Trey Cowboy Crips. Two
8 times, may be five times, but if it turns out that it's once,
9 am I to find that they're not credible and, therefore, the
10 identification is not reliable, if they visited a social media
11 account and learned or viewed people who might be associated
12 together, and were then later, through subsequent observation
13 while on patrol, or subsequent viewing of videos, were able to
14 associate those same individuals?

15 I mean, I think what's at issue is was the
16 identification of Mr. Woodford by the officers who we heard
17 from today reliable and did they unduly influence one another
18 or did somebody unduly influence them to identify
19 Mr. Woodford, correct?

20 MR. WEIL: Your Honor, that is the narrow issue at
21 the *Wade* hearing. There's no question we indicated this in a
22 footnote that the -- that we are -- the defense intends to,
23 depending on the outcome of this hearing, but if the Court
24 were to rule that the identifications were not suggestive, the
25 defense intends to argue that the officers lack sufficient

1 familiarity with Mr. Woodford to be permitted to take the step
2 of offering lay opinion testimony as to his identity.

3 They -- the government is proffering that these
4 officers are going to watch videos hoping to put before the
5 jury and the defendants will also be before the jury, and be
6 permitted to say, even though you members of the jury can see
7 those videos for yourself, I am sufficiently familiar with
8 Mr. Woodford, that I am telling you it's him in this video.
9 And that familiarity rises, in large part, and I know the
10 government said there was some observation but in large part
11 from the viewing of social media by these officers. And,
12 again, some of that social media will be available for the
13 jury to view as well.

14 So the issue of their familiarity with him is going
15 to be a critical issue in this case.

16 And there is -- their testimony on that issue was
17 without even raising an issue of their credibility, vague
18 imprecise and subject to the flaws of human memory. And
19 instead of that, we are in a position here to rely on a
20 computerized log that will reflect every time these pages
21 were -- were viewed. Evidence that is routinely seen as more
22 reliable than people's memory of such things, because why
23 wouldn't somebody remember something, whether they did it
24 twice a week, or five times a week, or however many times they
25 did it?

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1 And --

2 THE COURT: But Mr. Weil, I would agree with you if
3 all we're talking about was identification based on social
4 media views. But that's not what we have here.

5 We have testimony that they visited social media of
6 associates of Mr. Woodford. They learned from social media
7 before he was released from his state custody that he was
8 coming home. They viewed social media where he appeared.
9 They -- both officers were involved in a car stop which took
10 15 minutes, in which Mr. Woodford presented a pseudonym and
11 ultimately indicated his true name.

12 I mean, they remembered specifics, and they were
13 regularly patrolling their precinct and observing Mr. Woodford
14 and others in their precinct. We don't have just a single or
15 two or five social media views. We have, again, a totality of
16 circumstances that led these officers to the conclusion that
17 Mr. Woodford appeared on certain of these videos involving the
18 August 30th shooting.

19 MR. WEIL: Your Honor, Officer Donohue, for example,
20 testified that the car stop was his first and only viewing of
21 Mr. Woodford, unlike Officer Vasilopoulos, that he testified
22 that was his only viewing of him. This was a brief encounter
23 on the street.

24 THE COURT: Well, I think we established on the
25 record, at least there's evidence in the record, that this was

1 a 15-minute stop and there was questioning that Mr. -- that
2 officer -- I'm sorry, Sergeant Donohue observed by
3 Officer Vasilopoulos of Mr. Woodford in which he was trying to
4 ascertain his identity.

5 Cases, I understand that there's a lot of challenge
6 to eyewitness identification, but that's especially concerning
7 when you have a victim or someone, a witness, who's not
8 familiar with the particular defendant and observes, you know,
9 an individual with whom they're not familiar for the first
10 time in a brief period where their attention on the
11 identifying details of an individual may be distracted by the
12 fact that the person is holding a weapon or pointing a weapon
13 at them and their focus would be on a weapon. Or some other
14 thing that doesn't have to do with facial or physical or other
15 characteristics that would assist in the identification.

16 These are officers who are watching social media,
17 who are out on patrol. They're observing Mr. Woodford and his
18 associates. They understand who the group is in terms of the
19 Eight Trey Cowboy Crips who are operating in the
20 70th Precinct.

21 And I'm just concerned that we're getting hung up
22 and wanting to dig deep into NYPD investigative files over an
23 issue that is really a part of the overall identification.

24 MR. WEIL: Your Honor, it is -- it's a significant
25 piece of it and the government and the witnesses rely

1 significantly on their familiarity with it from social media.
2 There may be -- I understand the Court's point that there's
3 other familiarity as well. But we're ultimately in this case
4 not going to be dealing just with an identification because
5 the officers are were not witnesses to the crime any more than
6 the jury is. They're viewing videotape.

7 So we're not merely dealing with an issue of can
8 these officers make an ID if they were witnesses to a crime
9 and just suggested this. We're dealing with what the
10 government is going to pose, lay opinion testimony and say
11 that these officers are so familiar with Mr. Woodford, so
12 familiar with him, that they should be able to take the step
13 of pointing him out in court and saying that's the man who
14 committed this crime.

15 And the test for lay opinion testimony about
16 identity differs from whether or not -- from the issues at
17 this *Wade* hearing and it goes beyond it.

18 There's no question that their familiarity with the
19 defendant is going to be a critical issue at trial.

20 THE COURT: Doesn't every case involve testimony by
21 a law enforcement witness who says this is how the defendant
22 came to be in federal custody? I mean, there's always a
23 factual explanation to the jury how this person comes to be
24 before the court and what probable cause the officers had to
25 arrest the defendant. That's usually part of a trial.

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1 Whether they're going to say this individual on a
2 shooting video, you know, where the victim is seen being shot
3 and on the ground, and the shooter is seen, you know, coming
4 back several times to fire another shot at the victim, I don't
5 know whether the officers are going to say this is
6 Mr. Woodford. But they may argue to the jury that here's
7 Mr. Woodford in black and white shorts, and a white top, and
8 high-top sneakers. The day of the shooting --

9 MR. WEIL: But they plan on taking the step of
10 identifying Mr. Woodford in a video, and then in a video that
11 is going to be before the jury anyway. All of the videos
12 we've seen from the -- from by the subway station where the
13 fight broke out, to the shooting, are going to be before the
14 jury at trial.

15 And every case does not involve a lay opinion
16 testimony as to a person's identity where a police officer
17 comes in and says that's the person in the video. Normally a
18 court will give an instruction how the person came before the
19 court or was arrested is not the jury's concern, the propriety
20 of an arrest, or a search, are not the jury's concern, those
21 instructions are given routinely.

22 THE COURT: Right.

23 MR. WEIL: Lay opinion testimony, Your Honor,
24 requires a sufficient familiarity with the person that the
25 witness is offering something that the jury does not have on

1 their own.

2 THE COURT: Well, not insufficient familiarity, but
3 just something about the person identified that would lead a
4 witness or a victim to say this is the person, right? I mean,
5 I don't think sufficient familiarity; i.e., a history or a
6 prior relationship or a prior knowledge is required to make an
7 identification that would be within the bounds of the
8 constitution.

9 MR. WEIL: Your Honor, but these officers, not only
10 if the government disputes this, these officers were not
11 witnesses to the crime. So, of course, a witness to a crime
12 can come into court and say that's the guy who robbed me and
13 they could never have met him before in his life. We're not
14 dealing with that situation. We're dealing with a situation
15 where there's going to be a video in front of the jury, that
16 even though the officers didn't see it, anyone that did the
17 crime any more than the jury did, but the government wants the
18 officers to say that's Darrell Woodford, that's him in this
19 earlier video and you can tell, and you'll see in this later
20 video, he has the same clothes and government would then argue
21 that must be him.

22 But it's the officer looking at a video that is in
23 front of a jury and making -- and giving lay opinion testimony
24 about that, that is going to be a critical issue in the case
25 and, thus, the records of -- of -- from Facebook, whether they

1 have sufficient familiarity with them to do that, but they
2 were really viewing his stuff every day, are critical to that
3 issue. And so it's not in the defendant's ability to counter
4 that. We're going to argue they shouldn't be permitted to do
5 that in the first instance, Your Honor. But our ability to
6 make that argument and our ability to counter that testimony
7 if the judge offers, it is dependent on these exact records
8 which show exactly how much they were at this page, and
9 there's no interest in the government's in the investigative
10 files but for the fact that they plan on introducing the lay
11 opinion testimony.

12 We're not -- there's no issue about the probable
13 cause for his arrest. The government can play all those
14 videos to the jury and let the jury draw their own conclusions
15 about who's depicted in this --

16 THE COURT: Well, are you arguing a moment *in limine*
17 now that hasn't yet been made or are you arguing that we
18 should require a deeper dive into the social media accounts
19 maintained by the officers and Sergeant Donohue's unit?

20 MR. WEIL: We are -- we're entitled to discovery
21 now. In other words, we're preparing the case now. We're
22 arguing it's going to be relevant to the familiarity for
23 purposes of instant motion, it may matter. But it certainly
24 matters for trial, which we're in the process of preparing
25 for.

1 So if it's a -- I agree with Your Honor, it may come
2 up as a motion *in limine* later on. It may be that the Court,
3 since we raised the issue, wants us to brief it in conjunction
4 with the *Wade* issues now. Maybe that make sense. I don't
5 know, but either way, it's discovery that we should be
6 entitled to.

7 THE COURT: Is it your theory that the officers did
8 not see these videos or photographs of Mr. Woodford before the
9 arrest?

10 MR. WEIL: Our claim is the frequency of their
11 viewing -- I don't know. But their testimony on the issue of
12 how much they viewed the social media was imprecise and the
13 frequency with which they viewed this material is clearly
14 material to the defense in this case, and the defense should
15 have it. If they can't -- it's in -- in one form that they
16 have the password, it's in the government's custody and
17 control. If that won't get us the material we need, then the
18 Court should order them to disclose the account.

19 THE COURT: Let me ask you this:

20 Suppose they saw the photo of Mr. Woodford in front
21 of the vehicle when he's dressed in the white shirt and the
22 white shorts, June 18th, 2018, the photograph. They saw that
23 once. And they also saw the dancing in the bathrobe video
24 once. And they saw the interior of the car with Mr. Woodford
25 in the back once.

1 Would we require any eyewitness to say I must have
2 seen this many times in order to be sure of my identification?
3 Or would we allow the witness to say I saw this person briefly
4 during a particular incident that I observed and I'm
5 identifying this person?

6 I don't think that repetitive viewing is necessary
7 to an identification that could be valid in front of a jury,
8 but it seems the fact that they are arguing that they had to
9 have seen this more than the two to five times that they
10 testified to in order to accept that as a valid
11 identification. But in reality, given the unique nature of
12 this case, most eyewitnesses have a one -- one opportunity of
13 observation of a particular individual.

14 MR. WEIL: Your Honor, I apologize, and I think the
15 fault is mine for not articulating myself clearly.

16 But simply put, they are not eyewitnesses. This is
17 not eyewitness testimony that the government is offering from
18 these officers. And that is the difference, Your Honor.

19 Normally people testify based on personal knowledge;
20 that they have some personal knowledge that the jury doesn't
21 have, that they come in. I was a witness to the crime and
22 this is what I saw.

23 They're not eyewitnesses. They are giving an
24 opinion when they're watching the video and giving opinion
25 testimony based on it, and that's what distinguishes this

1 case, Your Honor.

2 So I agree with you. You're certain of an ID, you
3 don't have to ever have seen the person before, and the jury
4 decides what weight to give to it. But as to the lay opinion
5 testimony about an identification, the Court plays a
6 significant gatekeeping role as to whether it's going to allow
7 that to take place.

8 So that's the critical distinction I'm trying to
9 make, Your Honor, and I'm not making it well. But they are
10 not eyewitnesses and I -- and if the Court would like, we can
11 brief that as part of our briefing -- on post-hearing briefing
12 on this. Because I think it does make sense as we're
13 discussing these issues to lay it all out now, and it will be
14 clear to the Court why -- why, if that testimony is going to
15 be offered by the government, 100 percent reliable evidence
16 about those social media viewings is absolutely necessary to
17 the defense to both make our arguments to counter the
18 government's proof at trial and to make our arguments about
19 why that testimony should not be allowed.

20 But special familiarity isn't for lay opinion
21 testimony, just like special expertise is needed for any sort
22 of opinion testimony.

23 THE COURT: Well, Ms. Reid, maybe you don't want to
24 answer this now, but do you have eyewitnesses to the fighting
25 on the street, to the shooting that you would be presenting at

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1 trial in conjunction with the videos?

2 MS. REID: Your Honor --

3 THE COURT: I mean, they, at some point, are
4 entitled to know if there are such witnesses, and what they
5 might have said.

6 MS. REID: Your Honor, I prefer not to answer now.
7 But I think what's important is that the social media views
8 are not the only evidence and there's other evidence that has
9 not come out at this trial, but -- which the defense has,
10 including cell site records which place the defendant there at
11 the scene of the shooting. Phone records which have him
12 calling associates who are on the videos with him around the
13 time of the shooting. So there's other evidence, Your Honor,
14 that hasn't even come out at this hearing.

15 I do want to just note. In addition, I think
16 Mr. Weil has made it -- has overemphasized the difference in
17 this case from an identification case.

18 This case is not unusual. It's not unusual for
19 officers to view a video and make an identification. That
20 happens. And that's evaluated under the same rubric that
21 identifications are evaluated under any files in the Tenth
22 Circuit case that the government cited in its motion papers.
23 It's *United States v Williams*, 396 Fed. Appx. 516. It's from
24 2010. And in that case a forest officer identified a
25 defendant from a video. This exactly is this circumstance,

1 Your Honor.

2 And he did so after he had interacted with the
3 defendant on six occasions over three years where the
4 interactions with the defendant had been angry.

5 Your Honor, that case shows the rubric is the same.
6 We look at suggestiveness and reliability. There's nothing
7 unique about this situation I think as Mr. Weil suggesting.
8 The analysis we've been applying is the appropriate one.

9 And here I think, as the Court has squarely said,
10 that there's plenty of evidence that the reliability of the
11 identifications are separate and apart from that
12 suggestiveness question.

13 So, Your Honor, I just want to note that I don't
14 agree and I don't think there's -- the defense is cited any
15 cases to support their argument. And I do want to note that
16 their motion was a motion to suppress the identification
17 testimony and preclude an inquiry of that identification. And
18 the government responded to that. So I think this is the
19 appropriate time for the briefing on that to occur.

20 MR. WEIL: Your Honor, the defense would agree that
21 now would be an appropriate time to brief all of these issues.
22 So -- and the defense is happy to brief had the *Wade* issue,
23 the appropriateness of the lay opinion testimony, and the --
24 and I think the discovery issue will be -- we've already
25 briefed it some, but the significance of it will be apparent.

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1 THE COURT: You're using the term lay opinion and
2 I'm just curious as to what you mean when you say that.

3 Are you equating the officers with any other witness
4 to an offense? Or any other witness who says -- so suppose
5 there's a video that shows on the news. Here's the video of a
6 person, you know, sucker punches somebody who dies on the
7 street. And somebody comes forward based on that video and
8 says I think after seeing it one on the evening news that
9 person is so and so.

10 That person's a lay witness, right? And when you
11 use the term lay witness in the context of the officers, what
12 are you saying? That they are like that kind of a witness
13 or --

14 MR. WEIL: Well, that's fine example, Your Honor.
15 Then the next question would be, are you sufficiently
16 familiar? Are you offering any special familiarity with that
17 person? Say how well do you know him, right? And that's the
18 first thing a police officer would say when the person came
19 into the precinct and said I saw that surveillance video, I
20 know that guy. The first question would be, how do you him?
21 How well do you know him?

22 And the court, before allowing someone to come in
23 and comment on a video that's before the jury before and point
24 him out in court, would have to assure itself that that the
25 person has -- had a sufficient expertise of this person, for

1 lack of a better term, right, sufficient expertise that his
2 opinion on that have value that would -- would have value for
3 the jury that would overcome the prejudice of somebody viewing
4 something before the jury.

5 It's even extra complicated here, Your Honor, by the
6 fact that, in this case, the familiarity is coming from, in
7 large part, other evidence that's going to be before the jury
8 as well, right?

9 So in other words, the government could play those
10 same videos to the jury, not of the shooting, but from YouTube
11 and Facebook and other places. They presumably are going to
12 try to do that and say, see, that's Mr. Woodford.

13 THE COURT: In a vacuum of the video, or the videos
14 of him in the grocery store, are not going to be necessarily
15 relevant unless it's connected to the fact that this video in
16 the grocery store was taken even the day of or close in time
17 to the shooting, and this is what someone's wearing in this
18 video, or in the punch, you know, the fight later on in the
19 street. And this is what the shooter's wearing.

20 I mean, I think those videos would be relevant to
21 the jury's task of deciding whether or not the government can
22 prove Mr. Woodford -- they were not even proofing he's the
23 shooter the indictment charges him with an ammunition charge,
24 doesn't it?

25 MS. REID: That's right. Felon in possession of

1 ammunition.

2 MR. WEIL: For all practical purposes, Your Honor,
3 there's no other evidence that -- that -- the only evidence
4 they have that the defendant would have possessed ammunition
5 is whatever is seen on the video. There's not nothing else
6 that they've -- there's -- nothing was recovered from
7 Mr. Woodford, so it comes down -- it ultimately is going to be
8 similar issues, Your Honor.

9 I mean, we'd like -- I think I'm getting ahead of
10 myself here, Your Honor. The defense is requesting the
11 opportunity to brief these issues. And I think the need for
12 the discovery will be apparent when --

13 THE COURT: Well, I think you briefed the discovery
14 issue, hadn't you?

15 MR. WEIL: Yes.

16 THE COURT: I guess my view is this: Why is the
17 number of times an officer viewed social media relevant to
18 whether or not the identification is reliable and not
19 suggestive?

20 If the social media showed that they had no
21 familiarity because they never viewed any social media that
22 involved Mr. Woodford before the shooting, I would think that
23 would be an important fact.

24 But the number of times, I'm not sure, is relevant
25 or critical to whether or not the identification is reliable

1 and not suggestive.

2 MR. WEIL: And, Your Honor, that's the question
3 exclusively as to the hearing and the issues at the *Wade*
4 hearing, and I'm being repetitive.

5 The issue as to whether or not their testimony is
6 going to be used at trial is the lay opinion testimony, I
7 disagree with the government, is not simply is it suggestive
8 or -- or reliable? In other words, otherwise, any person
9 could come in and view a video and say, yeah, that's John
10 Smith in the video, and the Court, with the non-eyewitness, is
11 going to have a gatekeeping role to see if that is aiding the
12 jury or not usurping their function. That's the concern,
13 Judge. It's different kind of testimony sort of lay opinion.

14 The witness is taking the role of the jury and
15 giving it an opinion about evidence that is in front of the
16 jury and that's how it differs from a regular eyewitness.

17 But even as to the *Wade* issue, Your Honor -- again,
18 we're happy to brief it. Even as to the *Wade* issue, this was
19 an unusual procedure. As the Court noted, it wasn't like an
20 ordinary -- there wasn't an ordinary lineup. These are police
21 officers who -- who work together, who know each other.
22 They're viewing something together, even normally evaluating
23 this under typical identification standards, we said, no, you
24 can't do a joint ID in that fashion, that would be improperly
25 suggestive to have two people simultaneously view a suspect.

1 In a vacuum we'd say, well, that's a problem to have
2 two people view a suspect at the same time. We might even say
3 that's a problem -- I think we would say to have you view four
4 people and do a -- to view the four people who were suspects
5 at the same time. I think the group show up that there's some
6 case law saying that the police can't haul four guys in front
7 of a witness and say are these the four guys who robbed you?
8 That that too is suggestive. So everything about the
9 identification procedure itself is only cured -- is only cured
10 if that familiarity is there.

11 So even applying just the -- even just looking at
12 the issues of *the Wade* hearing, if it is going to come back to
13 the officers' familiarity with the -- with Mr. Woodford, such
14 that we're going to -- the Court's going to determine that
15 it's acceptable for them to make an identification
16 simultaneously.

17 THE COURT: Right. So I want to get back to the
18 discovery issue, right, because that's what we're all arguing
19 about at this point.

20 It doesn't seem to me that the search history is
21 necessarily going to shed light on your issue. I mean, it
22 will certainly shed light as to whether or not they searched.
23 But -- and so I think one concern that the government
24 indicated and it struck me with -- it seemed to be at first so
25 overly broad as to be unacceptable.

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1 All right. We confirm that the NYPD itself doesn't
2 have a log, but based on the social media accounts and what we
3 know is retrievable from social media in terms of search
4 histories, or even form Facebook regarding what sites or pages
5 or friends or whatever you call them, were visited, that may
6 be information that could be narrowly tailored.

7 Where Facebook -- or was it Twitter? Were those the
8 two social media accounts?

9 MR. WEIL: Instagram.

10 THE COURT: Instagram. Thank you.

11 Where they might have the ability to extract how
12 many times user X, whatever the name was that the NYPD was
13 using, in certain social media accounts prior to August 30th
14 and immediately thereafter during that time frame. It's got
15 to be pretty narrowly tailored and I know that a lot of the
16 information based on testimony that the officers believed was
17 not from any particular social media account of Mr. Woodford,
18 but rather from his cohorts, people that they knew were
19 friends with him or associates who been observed with
20 Mr. Woodford in the days preceding the shooting. So it would
21 be, I think, appropriate if Ms. Reid could provide or seek
22 information, either from the officers, and that information
23 isn't there, in the search history, to get information
24 regarding, you know, what pages they visited or sites.

25 MS. REID: And, Your Honor, I don't want to belabor

1 it. I do want to reiterate my objection to this. I just
2 don't believe it's material. And, arguably, it's not in the
3 government's possession. We would be getting this from
4 Facebook.

5 THE COURT: Right. What would stop me from ordering
6 a subpoena tendered to Facebook? And I would ask if that were
7 going to be the procedure, that the parties work together and
8 come to some narrowing of the request to a time frame that
9 would involve a period before the shooting and the day of and
10 at some stop point after the shooting. And it would also be
11 narrowly tailored as to certain individuals whom the officers
12 have identified, Mr. Williams, Mr. Chambers. I don't know
13 whether there's any -- Mr. Woodford I don't -- I don't recall
14 that from this witness.

15 MS. REID: Your Honor, I just -- I think what's
16 happened now is that the request has become even more
17 burdensome and large, because I agree, as the government
18 argued, the search history would not be complete and the
19 defense describes this as a perfectly accurate electronic
20 record, but that would not be complete, of course.

21 But asking for Facebook to produce, and for the
22 government to go through every single site, every single
23 Facebook page, for example, that any of these four officers
24 visited, even in a two-month period, is an extreme burden on
25 the government, Your Honor, not to mention it's a lot for

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1 Facebook to produce, but it's an extreme burden on us, Your
2 Honor, and I don't believe it's material.

3 THE COURT: Well, couldn't the search or the
4 subpoena to Facebook say that you're only interested in
5 visiting -- or information regarding visits to -- by this
6 particular account, Woodford, by the NYPD officers to these
7 particular sites.

8 MS. REID: I don't know if Facebook can narrow that,
9 Your Honor.

10 THE COURT: I think they're capable of it, honestly.
11 I'm -- I'm not a social media user. I know nothing about
12 social media. I do have a little bit of knowledge that
13 they're capable of extracting information in a very granular
14 way.

15 MS. REID: Okay. Your Honor, well, I also just want
16 to extract another thing that came up today which is that
17 Sergeant Donohue has testified that at least four people use
18 this account.

19 So, again, I don't see how any results that come up
20 would necessarily be relevant to these officers. We won't
21 know who these people are who are searching, Your Honor.
22 We're looking these pages up.

23 Four different people use this account to search
24 daily and monitor people daily.

25 THE COURT: It is a part of a very small unit they

1 share information orally when if they come up with something
2 relevant.

3 MS. REID: Yes, Your Honor, but the whole issue is
4 whether the material is -- it can't be material if it's about
5 people who are not even testifying, Your Honor.

6 And, obviously, the government has stressed this
7 materiality. I truly don't think that there's any difference
8 between this request and requesting all of the other things
9 that the government listed in its recent motion, Your Honor,
10 cell site records for the police officers on any particular
11 day over the summer of 2018, to somehow possibly challenge
12 whether or not they did patrol on that day, Your Honor. Car
13 records for their cars, for the same reason.

14 And I think it's a very slippery slope when the
15 Court thinks about granting a request like this. And I think
16 in this day and age, Your Honor, as the Court is aware,
17 Facebook, Instagram, the majority of people use these sites
18 and investigators look suspects up on them. This happens all
19 the time.

20 And my concern is this is setting a very dangerous
21 precedent where the government is going to have to get an
22 extremely large amount of records, cull through them, and
23 provide them in any case going forward where investigators
24 looked up people on Facebook. And it's just not allowed under
25 the discovery rules, Your Honor.

1 The government would get nothing done if that were
2 the rule, and as the Court noted, there's just no obligation
3 to provide every investigative step.

4 So, Your Honor, I would just reiterate all the
5 objections that the government has made, and I think
6 especially in light of the testimony today, it's just not an
7 appropriate request.

8 THE COURT: Well, I think the defense does have a
9 problem which is -- it came up for the first time today the
10 information that Sergeant Donohue testified to that all
11 officers in his unit use the same social media account to view
12 the posting of the individuals that they're investigating.
13 And how they can figure out who did what.

14 MR. WEIL: Your Honor, that may be a problem we need
15 to address. If we get to the point where we're using this --
16 the officers may need to be called and that this record says
17 this account went to Facebook 50 times, how many of those do
18 you think were yours? They might be stuck with that answer
19 and not that something more precise than that.

20 THE COURT: I hear you, but you're getting to
21 credibility because the whole reason for this request, as
22 Ms. Glashausser laid out was, this is about credibility. I
23 need to test the credibility and my question is whether it's
24 once, twice or five times or more than five times, what
25 difference does it make?

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1 MR. WEIL: Your Honor, I think -- I don't think it's
2 just --

3 THE COURT: Well, that's --

4 MS. REID: -- request we have, but credibility plus
5 familiarity, Your Honor. I mean, ultimately when we get to
6 this lay opinion issue which, again, we're going to brief it,
7 it's going to be credibility coupled with just their
8 familiarity, are they sufficiently familiar with him, which --
9 which may be something we want to argue to the Court, or if
10 the Court permits that testimony, something we may be able to
11 argue to the jury.

12 For example, Your Honor, let's say it was once,
13 right? Let's go with Your Honor's hypothetical, say it was
14 once. They saw this once. And Your Honor has allowed the
15 testimony in, which we hope you would.

16 We're going to want to argue to the jury that they
17 don't know any more about this than the ladies and gentlemen
18 of the jury, look at this Facebook record. They visited this
19 site once. You can see it for yourself. Can you identify the
20 person in that video? Or they can put up a still from
21 Facebook or a photo from Facebook and say now you have as much
22 information as -- as the officers do, and if you're not
23 certain who it is, why would you rely on them? What's the
24 point? The defense has to be able to make those sorts of
25 argument, Your Honor, about identification in this case.

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1 THE COURT: Well, all right, then we have to forget
2 about all the social media.

3 MR. WEIL: I'm sorry?

4 THE COURT: Forget about all the social media, you
5 have a specific group of officers devoted to monitoring gang
6 activity in their precinct, and they are out on patrol on a
7 daily basis, sergeant and the officers. They have this very
8 lengthy car stop in which they specifically were conversant
9 with Mr. Woodford about his identification and who he is and
10 what his true name is. And to have the officers' familiarity
11 with Mr. Woodford's friends and associates based on prior
12 arrests, debriefing and patrol observations. I mean, they're
13 familiar with the individuals, separate and apart from any
14 social media.

15 MR. WEIL: I mean, Your Honor, the government had to
16 rely on the familiarity from social media both at this
17 hearing --

18 THE COURT: Among other factors.

19 MR. WEIL: Among other factors.

20 THE COURT: Not just that. I could forget about the
21 social media, I think and make --

22 MR. WEIL: Your Honor --

23 THE COURT: -- hear what arguments you have to make
24 about all the other circumstances that led the officers to be
25 familiar with Mr. Woodford.

1 MR. WEIL: If you look at small selection of cases
2 the government has and we'll get our own on this issue that
3 where witnesses have been able -- non-eyewitnesses have been
4 able to offer lay opinion testimony to someone's
5 identification, there is greater face-to-face contact than
6 there was here.

7 And on top of that, Your Honor, if they are making
8 an identification based on guilt by association, we've seen
9 these people before, even though I can't see him in this
10 video, it doesn't really matter because we know those are his
11 friends. That in itself is going to be problematic from the
12 defense's perspective. So exactly what their basis for
13 knowing him is going to -- is going to be significant. And
14 the government has relied on the social media familiarity
15 throughout this hearing, and part of their direct testimony
16 with Officer Vasilopoulos on the first day, and in their
17 papers, I assume they intend to do so at trial.

18 THE COURT: Well, this is what I'm going to suggest.

19 I understand the government objects, but I think
20 that the two of you and -- the government and the defendant --
21 should sit down and talk about what very narrow search
22 criteria could be provided to Facebook that would not require
23 either Facebook or the government to incur undue burden. I
24 think if you narrow it as to time frame, as particular social
25 media pages visited, you could get there.

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1 MR. WEIL: The defense has to be clear, Your Honor.
2 The defense has no interest in who else these officers are
3 monitoring. What else they're looking at. It's exclusively
4 pages on which they are relying in their testimony.

5 THE COURT: Well, I think you could look at the
6 transcript and see which pages that they said they --

7 It's not more than, I think --

8 MR. WEIL: Four or five.

9 MS. REID: On a daily basis, Your Honor, I just
10 wants to reiterate. It's on a daily basis.

11 THE COURT: Right, but they may find there is no hit
12 on any visits to a page of a certain person on a particular
13 day.

14 MS. REID: And I just want to reiterate, Your Honor,
15 I think that might be incomplete, even with those records.
16 Your Honor, in Facebook, for example, if you're friends with
17 people, you will get a news feed, and you don't have to click
18 on anything in order to see what someone posts on their
19 Facebook. You can just go to your home page and see a feed of
20 people that you follow, and those people's posts will just pop
21 up. You can just watch it. So all of these records, I think,
22 will be incomplete, Your Honor.

23 And I just want to reiterate what I said in the
24 papers which is, I don't see any reason why the defense can't
25 make these arguments to the jury without the records. I think

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1 that's the standard under cases the government cites about
2 whether something is material or cumulative. The *Germain* case
3 33 *Fed Appx.* 555, from the 2nd Cir, 2002.

4 Your Honor, I just -- they are making good argument,
5 Your Honor, and they are free to make those to the jury.
6 There's nothing about these records, which I will reiterate,
7 is an extremely burdensome job for the government to get and
8 sets a very bad precedent. There's nothing about those
9 records that will change or significantly improve those
10 arguments to the jury.

11 (Continued on next page.)
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1 (Continuing)

2 THE COURT: So the feed that you described -- and,
3 again, I am not familiar with it, but suppose I have a
4 Facebook account or something and I get notice that there's
5 something posted by someone I follow, are you saying that I
6 can read the whole thing or see the whole thing without
7 clicking on it; it would just be there?

8 MS. REID: Yes.

9 THE COURT: All right.

10 And it would not record as a visit or a hit?

11 MS. REID: I don't believe so, Your Honor. I don't
12 think the records would be complete in terms of showing all
13 the times that someone saw something on someone's page for
14 that reason.

15 MR. WEIL: Your Honor, I'm not sufficiently familiar
16 with Facebook's recordkeeping to know if that's the case.
17 Again, I don't know that -- this is speculative on the
18 Government's part. I don't know that that was going on --

19 THE COURT: Well, you have a Facebook account, so
20 when you get a notification that your niece has posted a
21 video, do you have to click on her site, or can you just open
22 her Facebook page and see it?

23 MR. WEIL: I will see -- in my account, Your Honor,
24 I will see, like, a snippet. So, in other words, there will
25 be something, and it will be small, and if I want to watch it,

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1 I will click on it and it will take me to her page.

2 THE COURT: Okay. So it still requires the viewer
3 go to the page; is that right?

4 MR. WEIL: That's -- I can see a small version of it
5 on my screen and then I have to click on it to go on the page
6 and I --

7 MS. REID: If there's a photo, you will see the
8 photo, Your Honor. You don't have to click on anything to see
9 a photo; it's just there.

10 THE COURT: Right. They might want to see more than
11 a photo. I would imagine the officers want to see text. In
12 fact, the officer said, it's not just photos, it's --

13 MS. REID: You can see a caption, Your Honor, on the
14 home page. And, in addition, the whole point is this is an
15 accurate -- the whole point of the request is it's an accurate
16 record and it's not, Your Honor, it's just not, for all these
17 reasons. And Mr. Aganga-Williams has Instagram and Facebook,
18 I mean, he's a good -- he can report to the Court what
19 happens.

20 MR. AGANGA-WILLIAMS: Judge, I'm happy to speak to
21 that, and to the extent Your Honor will take judicial notice,
22 I'm happy to show Your Honor how Facebook and Instagram
23 timelines work on my phone I have here.

24 Your Honor, it's a free flow of information, so Your
25 Honor is correct. In certain circumstances a user can click

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1 on a profile or click on a post to get more information, but
2 there are plenty of posts. For example, if someone were to
3 post a photograph on Instagram, the whole point of it -- you
4 get on your Instagram, and there's a timeline, a free flow,
5 you open it and you see all my friends -- one, two, three,
6 four -- have posted these things today, and I just scroll.
7 Without clicking, without touching further, you just scroll.

8 Moreover, Your Honor, on Facebook, individuals can
9 post photographs, they can post text, they can post
10 photographs with text the same way with a timeline. Unless
11 that text is substantial in nature where the caption preview
12 would make it -- it's a full essay -- there's no need to click
13 on expansion because it comes up again on your timeline of
14 free flow information. But, in both circumstances, anyone
15 who -- especially when you are reviewing social media on a
16 daily basis, the whole point of how these platforms are made
17 are the constant reception of information without further
18 action. So an individual would go on there and see you have
19 12 friends and you just see the information and I think that
20 he would -- in a situation like this where these accounts are
21 not made for personal use, you're basically looking at certain
22 individuals. It's more likely the information you are looking
23 at would all be relevant in your timeline and wouldn't require
24 further action, so I think any kind of data pool that involves
25 searches or clicks would necessarily miss out on a large piece

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1 because if I was looking at the flow, I can see John Smith
2 today posted a picture of a basketball. I wouldn't have to go
3 click that further. I would just -- that person would keep
4 going, I would keep scrolling, Jane Doe posted a picture of
5 flowers or her lunch, I would see that, so I think -- and
6 that's the norm, and I think -- and to the extent Your Honor
7 wants to take judicial notice, I think it's clear by the way
8 these applications work. If one were to open up Instagram now
9 which, you know -- to the extent Your Honor wants to see these
10 platforms, I'm happy to show, that's how it works. Not to say
11 there are not instances where you do take an affirmative
12 action of clicking on something, that could be. One can
13 search specifically for Jane Doe and decide I want to see
14 what's happening because I haven't logged in to Instagram in
15 six months and I don't know everything they have done, so I
16 can go click, but if you are looking on a daily basis, you
17 wouldn't need to do that.

18 THE COURT: So would you have to be following
19 somebody or just be a friend? How do you end up getting the
20 flow? If you have 10,000 followers or whatever, are you going
21 to get flows from all those people, or do you have to have a
22 special relationship.

23 MR. AGANGA-WILLIAMS: It depends on the algorithms,
24 Your Honor. So for Instagram, if you are searching on your
25 own page, you will see the people you follow. Now, you may

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1 follow 3,000 people, so at that time, it depends, one, have
2 those people posted, and whatever algorithm that the company
3 uses to show you what order they show you them in, so that's
4 more data that I'm familiar with.

5 With Facebook as well, you are only seeing people
6 specifically that you are friends with. So the lingo with
7 Facebook, you are friends -- with Instagram, if you don't
8 follow someone on your timeline, they don't show up. So you
9 can follow a celebrity, for example, they don't follow you
10 back, but you still see their posts as they happen.

11 With Facebook, you can both follow someone and they
12 are not your friend; or if you are friends, then they can show
13 up on your timeline. There's algorithms with both that
14 would -- that can impact the order with which you would see
15 someone, how numerous -- the numerous times they show up, and
16 that's my understanding. I think that's widely documented in
17 the media.

18 For example, if I interact with someone on social
19 media by looking at the profile a lot, the algorithm is now
20 aware that I like to see that person and they would show up
21 more prominently for my page because that's a person I access.

22 THE COURT: Well, if the officers -- since we have
23 the issue of familiarity here, and I think his credibility now
24 has fallen to second place in the strongest argument the
25 defense wants to proffer, what would be the best and least

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1 intrusive way that the Government could ask the officers who
2 have control of this account to just show how often they
3 visited or viewed the media pages of the small group of less
4 than five individuals that they were monitoring in relation to
5 the 8 Trey Cowboy Crips?

6 MS. REID: Your Honor, I don't believe there is a
7 way to give a complete record without being very burdensome.

8 THE COURT: Mr. Aganga-Williams might know since he
9 has this. I mean, if I were to tell you, hey, tell me how
10 many times before today you checked in on so-and-so, you're
11 sister --

12 MR. AGANGA-WILLIAMS: I think, Your Honor, the best
13 way the Court would know is the way the Court did learn,
14 through testimony. If Your Honor wanted to know how often I
15 see someone through my Instagram, that number could change
16 dramatically based on how bored I am that day and how often I
17 scroll through the same pictures. That can happen, too, Your
18 Honor. It's a cycle of a flow.

19 THE COURT: What if I said, show me whether you have
20 done this, whether you visited someone's page every day, how
21 would you do that?

22 MR. AGANGA-WILLIAMS: Your Honor, there's no way I
23 know to do that because what happens, Your Honor, is that you
24 often are seeing information -- I can speak to this
25 personally, and I think anyone with Instagram and Facebook,

1 especially when you use it on a phone -- you are seeing
2 information daily without any affirmative action on your part.
3 So the typical way, you open up your phone, for example, and
4 your Instagram timeline flows and pictures come up. You're
5 scrolling literally on your phone as such, but you are not
6 typically interacting unless you were, for example, like a
7 photo otherwise through affirmative action. But merely
8 visually seeing the information doesn't require you to do
9 anything because the whole basis of both platforms is the free
10 flow of information from the people you are socially connected
11 with.

12 So I think if someone were to fully want to know how
13 much an individual is interacting with these platforms, it
14 would be through the testimony. It would be, say, I click,
15 but also I look, I scroll, here's how often I do it. I think
16 that would be the most complete way, which is what we have
17 here already.

18 THE COURT: All right.

19 So, Ms. Glashausser, you did have an opportunity to
20 make all these inquiries. Why didn't you do it? To get the
21 details, like, all right, you said you visited every day, what
22 specifically did you do? Was this a flow? Was it a click?
23 Was it a response on your part? Did you just get pop-ups on a
24 daily basis from these people? How did you do it? Why
25 wouldn't you ask that?

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1 MS. GLASHAUSSER: I believe I did ask some of those
2 questions.

3 THE COURT: If you had asked those questions --
4 look, maybe we just need some more limited briefing on this
5 issue. I mean, look, I'm -- yeah.

6 MS. GLASHAUSSER: Officer Vasilopoulos testified
7 that he went to the specific pages, that's how he testified --

8 MS. REID: On some occasions. He also testified he
9 got notifications, Your Honor, from some people, so I don't
10 believe that's an accurate characterization of all the
11 testimony.

12 THE COURT: Both of you are going to have the
13 transcript shortly, so why don't you do this, limited
14 briefing, because I want to try to get to what the defendants
15 say they need, but, on the other hand, I'm not sure that the
16 best way wouldn't have been through more detailed questioning
17 of the witnesses because it sounds to me like whatever burdens
18 we put on these nonparties, these social media platforms,
19 whatever burdens we put on them, it's still not going to
20 really be helpful to get to the question you all want to
21 ascertain, which is familiarity, because if they're flowing on
22 the page, or whatever Mr. Aganga-Williams described, it's just
23 not going to show anything, it's not going to be recorded.

24 MR. WEIL: Your Honor, again, we don't know now that
25 that problem is going to arise. We don't know how -- how they

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1 view the pages. There was some testimony that they visited
2 the pages. We're certainly going to know how often they were
3 logging in to Facebook. That -- we are going to see that, how
4 often they're going on Facebook, period. Right? We get some
5 indication of that, I believe.

6 THE COURT: Could you extract that from your own
7 records? In your account, could you go home tonight and say,
8 how many times have I logged on to Facebook between a certain
9 period of time?

10 MR. WEIL: I think I would have -- I don't know how
11 to do that. I think I would probably have to get that from
12 Facebook --

13 MR. AGANGA-WILLIAMS: Judge, as far as Facebook and
14 Instagram, I've had those for years and I haven't put a
15 password into either one in literally probably years because
16 you don't -- if you log on to a computer, as I imagine would
17 be here where certain officers are in a small setting, they're
18 using the same profile, they wouldn't be looking at when you
19 log in and log out, would not speak to the use, because you
20 may log in on Tuesday and remain logged in on a device for
21 weeks, months, or even years without having any need to log
22 back in. So I think Your Honor is observing the issue here is
23 that these records, which, as Ms. Reid mentioned, would be
24 burdensome to get, do not get to the question at hand whether
25 it's the credibility of the officers, which Your Honor has

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1 noted, there are multiple ways the officers were familiar with
2 Mr. Woodford, or to the point of the more specific analysis, I
3 guess, which is a question that what would be material here,
4 because it would not provide a full picture. What we would be
5 doing is the Government is undertaking a burdensome effort to
6 either create materials that don't exist, which the Government
7 has the obligation to do, or to ask Facebook, therefore, to go
8 and collect and craft information that is then only going to
9 be a piece of the puzzle, and what we're left with is where we
10 are now, which is that the witnesses can be questioned about
11 what they did and how they did it, and I think the defense had
12 that opportunity to do that already.

13 THE COURT: Well, couldn't I find, as a matter of
14 law and fact, that testimony on a particular point is credible
15 and that one visit, two visits, five visits, whatever it might
16 be, coupled with everything else the officers did to
17 familiarize themselves with the 8 Trey Cowboy Crips and those
18 who associated with them, including Mr. Woodford, would be
19 sufficient for me to accept that their identification was
20 reliable and not unduly influenced by another person?

21 MR. WEIL: I mean, Your Honor, we still -- that
22 still leaves us with a trial -- even if you were to find that,
23 which we don't think you should, it still leaves us with a
24 trial issue, I would just note. It doesn't solve the issue --
25 even if the Court decides to allow the lay opinion testimony,

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1 we have to be able to subpoena documents to confront
2 witnesses, and that the Facebook custodian of records is a
3 necessary defense witness that we have to be able to get at
4 that the Government, we believe, under *Ravirio* and its progeny
5 has to disclose in this case.

6 And, Your Honor, the Government has raised arguments
7 about burden. Facebook has a team of lawyers who can tell us
8 what they can and cannot do. It's a very wealthy company;
9 this is no burden on the Government. Our understanding, Your
10 Honor, is that Facebook has a tremendous amount of data, that
11 they know how long you are scrolled on to a page. If I look
12 at Ms. Glashausser's page if we're friends on Facebook, if I
13 look at her page a lot, I will get a suggestion of her sister
14 as a friend. They track how long your eyeballs are on things,
15 that's how they sell advertising. They have a tremendous
16 amount of information which has raised so many concerns about
17 them among the public, but we are putting the cart before the
18 horse here. The Government may have an argument that what we
19 get back shouldn't be admitted, that what we get back isn't
20 informative. They may have all of those arguments. We don't
21 normally make those arguments before we have the information
22 or we've gotten the response or the motion to quash.

23 So we have this parade of parables without having
24 the information in front of us, and I think we're putting the
25 cart before the horse. Let's serve the subpoena, agree on its

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1 terms, and see what Facebook says; and then if the Government
2 wants to call the officer and have him say, well, no I didn't
3 view it that way, it just flowed through my phone like it does
4 on the U.S. Attorney's phone, then we will have that answer
5 and we will have to address it then.

6 MS. REID: Your Honor, the horse that needs to come
7 first is the actual basis for the request. They have to
8 establish that they are entitled to the records, Your Honor.

9 THE COURT: Well, look, they have made, I think, a
10 decent argument that, in defending this case, they have the
11 right to be able to test the credibility of the witnesses and
12 also to challenge whether or not they were familiar enough
13 with Mr. Woodford based on the social media and all the other
14 factors to identify him in some of these videos, and I think
15 that -- if I understand their papers, they've argued that it's
16 necessary and critical to their defense, it's material to
17 their defense, the identification of Mr. Woodford in a grainy
18 video where an individual is seen shooting a victim, is, in
19 fact, Mr. Woodford.

20 MS. REID: And, Your Honor, there are so many other
21 issues, issues related to that core issue, which I absolutely
22 agree is the core of the case at this point, but, Your Honor,
23 that are just not material and so they would not --

24 THE COURT: You say over and over it's not material,
25 they say over and over it is material, so it's not really

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1 advancing the argument. It either is or isn't material. I
2 think identification is material. I think that their ability
3 to defend is material, and the question is what universe of
4 information falls into that because it is possible if this
5 were a different case and there was no social media, that the
6 officer's identification could still be upheld if I found them
7 credible based on their patrols, their prior debriefings of
8 other people, their 15-minute conversation with the defendant,
9 et cetera. I mean, Officer Vasilopoulos did identify the
10 physical characteristics of Mr. Woodford that he was familiar
11 with and that he observed on the video, as did Sergeant
12 Donahue.

13 So I could decide one way or the other even without
14 the social media. I understand the point that the defendants'
15 view is that the officers seemed to rely pretty heavily on
16 social media, at least up until the time prior to the
17 shooting, and even right after they were looking to see what
18 might have been said, and I understand the Government has a
19 whole host of other evidence which they believe is going to
20 prove their case beyond a reasonable doubt.

21 But I would like to do this since we've been having
22 a lot of argument. Do you want another opportunity to submit
23 limited briefing as to why or why not this social media
24 subpoena is important not just to the identification issue but
25 also to the way you see the trial unfolding in the future? If

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1 you don't, that's fine, but part of that might be information
2 that we can get from social media providers -- Twitter and
3 Facebook -- I'm sorry, Instagram and Facebook, I don't even
4 know the difference, but okay -- Instagram and Facebook as to
5 what this will show, what they're capable of extracting. I
6 would encourage the parties to try to work out a limited
7 narrow subpoena that would assist. We don't know -- I mean, I
8 just don't know enough to know how big of a burden it would be
9 and whether this would be a subpoena that I would so order on
10 behalf of the Government or on behalf of the defense and who
11 would shoulder the burden of going through the results of that
12 subpoena.

13 MS. REID: Your Honor, I just want to raise an
14 issue, which is that obviously there was testimony that the
15 account that was used by this unit of officers is like an
16 investigatory tool.

17 THE COURT: Exactly.

18 MS. REID: Obviously, the Government would oppose
19 the release of the actual account name.

20 THE COURT: Understood.

21 MS. REID: So I think that by definition, the burden
22 would then fall on the Government.

23 And, Your Honor, I just want to reiterate, I'm
24 concerned not only about this case but the precedent this sets
25 because this will come up in many cases.

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1 THE COURT: Well, you know what, I think that social
2 media has started to play such a big role in all litigation,
3 civil and criminal, and so it will arise, if not in this case,
4 in some other case --

5 MS. REID: Yes, Your Honor, and so --

6 THE COURT: -- and judges may or may not agree with
7 my decision or they may decide differently, but we can't avoid
8 it just because it's there.

9 MS. REID: I agree, Your Honor. I just think it
10 requires an extreme dedication to what the rules allow for
11 because it will set a precedent, Your Honor, and I've already
12 explained why I believe it's not met in this case.

13 THE COURT: All right.

14 So how do you want to proceed? Do you want further
15 briefing opportunities on either side, or do you want to just
16 try to talk first about whether you can agree to the narrow
17 terms of the subpoena?

18 MR. WEIL: I don't see any conflict around the
19 terms. The defense 100 percent agrees with the Court that we
20 are not interested in any ongoing investigations, we are not
21 interested in anyone else's page who hasn't been mentioned in
22 this Court, we are not interested in any time period before
23 they started viewing Mr. Woodford and -- or hearing about him,
24 so it would be a couple-month time period, five people's
25 pages. I'm happy to put in any parameters in the subpoena to

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1 say, please indicate length of time viewed or whatever other
2 information Facebook has.

3 THE COURT: I think it would certainly not start
4 before the time that the first post was observed indicating
5 that Mr. Woodford was going home that particular -- I don't
6 think it can be earlier than that. I mean, I hope that you
7 can come to some mutually agreeable decision on that and it
8 would not foreclose you from arguing because I may just decide
9 after I read further briefing that this isn't a good idea or
10 it's not warranted by law, but I think that your efforts to
11 craft the terms would be helpful to me as well, and if there
12 are particular reasons why one side or the other insists or
13 resists a search parameter, I would rule on that, because
14 ultimately I will be so ordering the subpoena. All right?

15 So how much time do you need for all this?

16 MS. REID: Your Honor, the way I understand it, the
17 defense briefing -- additional briefing -- and suggestions for
18 a subpoena would go first, so I guess I will let you answer
19 first.

20 MR. WEIL: Your Honor, we are happy to draft a draft
21 subpoena to provide to the Government to raise any objections
22 to. We're happy to simultaneously brief the issues from this
23 hearing.

24 Is that fair?

25 Hold on.

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1 (Pause.)

2 MR. WEIL: So I think we can submit a draft subpoena
3 in a week for the post-hearing briefing. We require the
4 transcript in, I think, a few weeks, and while those issues
5 are percolating, I just wanted to ask the Court if it would
6 like us to, since we are discussing identification, brief our
7 other concerns about the identification beyond those, you
8 know, that are in the nature of a -- more in the nature of a
9 motion in limine.

10 THE COURT: Yes, I mean, one concern I have is you
11 might be making motions on matters that aren't even going to
12 be at issue in the trial. I don't know if you talked to the
13 Government or whether they've told you what they're going to
14 do or how they are going to present the videos or the
15 testimony of the officers. It may not be an issue. I don't
16 know whether Ms. Reid and Mr. Aganga-Williams are willing, at
17 this point, to say what they are going to do, but there's a
18 lot of emphasis on what the Government may do in court before
19 the jury, and I don't know whether they're going to do that,
20 or I don't know exactly what you are envisioning when you
21 describe an in-court identification of the defendant coupled
22 with the videos. I think you need to understand before you
23 challenge something what's going to actually happen, if you
24 know, or if the Government has been willing to share that.

25 MS. REID: Well, Your Honor, the original motion was

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1 to suppress the actual identification --

2 THE COURT: Yes.

3 MS. REID: -- of the video and any in-court
4 identification made by these witnesses, so I think it makes
5 sense to handle both those issues now as opposed to wait for a
6 motion in limine.

7 THE COURT: Okay.

8 MR. WEIL: Your Honor, I don't think there would
9 have been -- again, there was no -- and this is why this is
10 different than just an investigative file. The defense was
11 not disputing the manner in which Mr. Woodford was arrested.
12 The issue for the defense is the in-court ID, which -- and we
13 wouldn't have even been able to late hearing but for the
14 Government's proposal to profer that testimony. So I think
15 the issue is joined and we should -- and I agree with the
16 Government we should brief it.

17 THE COURT: All right.

18 So how much time do you need for the briefing that
19 you are going to order the transcript from the court reporter
20 and she will give you -- I think you have an idea what her
21 time frames are.

22 MR. WEIL: How is August 13th, Your Honor?

23 THE COURT: What did you say?

24 MS. GLASHAUSSER: August 13th, Your Honor.

25 THE COURT: So when you say in-court ID, you mean

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1 that the officers would say this is Mr. Woodford, the very
2 same person who we identified in the video, they would
3 identify him -- as in court -- and pointing to him and
4 identifying a garment that he's wearing in court at the trial
5 as well as identifying him from the video? I'm not quite sure
6 what you're --

7 MR. WEIL: That doesn't even -- yeah, I mean, it's
8 all -- to me, it's the same. They're being permitted to look
9 at the video and say who they believe it is. To look at a
10 piece of evidence that's already in front of the jury and
11 indicate who they believe it is regardless of whether they
12 point at him, it doesn't really -- it doesn't really matter.
13 Either of those things would constitute an in-court ID, but I
14 defer to Ms. Glashausser for this.

15 MS. GLASHAUSSER: Right. Just, I think, to answer
16 Your Honor's concern, that's what we're challenging, what
17 Mr. Weil described, just pointing to the video and saying I
18 identify that person in the video as Mr. Woodford.

19 MS. REID: Your Honor, the Government would intend
20 to have the officers watch the videos and identify the
21 defendant from the videos as they did in court during this
22 hearing and to look at the defendant seated in court and
23 identify him in court just the way that we do all the time
24 with other kinds of witnesses.

25 THE COURT: All right.

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1 So if the defense provides the briefing by
2 August 13th, how much time does the Government need to
3 respond?

4 MS. REID: Two weeks would be fine, Your Honor, so
5 the 27th?

6 THE COURT: Okay.

7 Will the defense want a reply?

8 MS. GLASHAUSSER: Yes, Your Honor, please.

9 THE COURT: Okay.

10 Listen, don't keep submitting things after this
11 because I feel like, you know, seven or eight letters on the
12 same thing, one after the other every other day gets to be a
13 little crazy. I mean, we're setting up a briefing schedule
14 for this, so how much time do you need for a reply.

15 MS. GLASHAUSSER: I would ask for two weeks, Your
16 Honor, September 10th?

17 THE COURT: Okay.

18 And in part of this briefing, will the parties be
19 raising the -- I know the Government has raised a lot of
20 arguments as to why this should not -- the third-party request
21 of social media should not be allowed at all, but is there any
22 other briefing on that issue?

23 MR. WEIL: We are going to submit the request for
24 the subpoena, Your Honor. I feel that --

25 THE COURT: All right.

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1 MR. WEIL: -- the Court is familiar with that issue.

2 THE COURT: Okay.

3 So once the Government gets the proposed subpoena,
4 what time frame does the Government need to respond?

5 MS. REID: Your Honor, I think a week would be fine.

6 THE COURT: Okay. And then if there's a major
7 disagreement as to terms, you will bring that to my attention
8 at that time, Ms. Reid?

9 MS. REID: I apologize, Your Honor.

10 THE COURT: You said you would need a week after
11 getting their response. I mean, I would like you to try to
12 have a discussion, and then if you can't resolve it, bring it
13 to my attention.

14 MS. REID: Yes, Your Honor.

15 THE COURT: Today is the 23rd. You will get the
16 proposed subpoena by the 30th, and so why don't the parties
17 give me something in writing. If by some chance you cannot
18 agree, and I expect that you will, but if you don't, by
19 August 6th? Is that --

20 MS. REID: That's fine, Your Honor.

21 THE COURT: All right. Simultaneous submissions,
22 okay?

23 MS. GLASHAUSSER: Yes, Your Honor.

24 THE COURT: All right, thank you.

25 Is there anything else?

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MR. WEIL: No, thank you.

MS. GLASHAUSSER: No, Your Honor.

THE COURT: All right.

Thank you marshals and thank you for your time.

(Matter concluded.)

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I N D E X

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BY MS. GLASHAUSSER

CROSS-EXAMINATION 258
BY MS. REID

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Defendant's Exhibit B 224

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*I (we) certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.*

/s/ David R. Roy
DAVID R. ROY

26th Day of July, 2019
Date